

CH 7530 ST-100 1-12-99

Received

FEB 03 1999

Group 2700

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

BEASLEY, et al.

Serial No. 08/969,723

Filed: November 12, 1997

For: Interconnection System for Viewing and Controlling
Remotely Connected Computers with On-Screen Video
Overlay for Controlling of the Interconnection Switch

HAND CARRY: GROUP 2700

Atty. Ref.:

Group: 2757

Examiner: Dinh, D.

Received

FEB 03 1999

Group 2700

* * * * *

February 3, 1999

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

PETITION TO WAIVE THE RULES

COURTESY COPY FOR GROUP DIRECTOR

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Atty Dkt.

C#/M#

BEASLEY et al.

Group Art Unit: **2757**

Serial No. **08/969,723**

Examiner: **D. Dinh**

Filed: **November 12, 1997**

Date: **February 3, 1999**

Title: Interconnection System for Viewing and Controlling Remotely
Connected Computers with On-Screen Video Overlay for
Controlling of the Interconnection Switch

Honorable Commissioner of Patents
and Trademarks
Washington, DC 20231

Sir:

Fees are attached as calculated below:

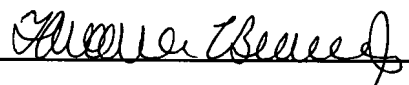
FEE FOR PETITION	\$130.00
TOTAL ENCLOSED	\$130.00

The Commissioner is hereby authorized to charge any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

1100 North Glebe Road
8th Floor
Arlington, Virginia 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100
HWB:sks

NIXON & VANDERHYE P.C.

By Atty: H. Warren Burnam, Jr., Reg. No. 29,366

Signature: 

RECEIVED

FEB 03 1999

OFFICE OF PETITIONS
A/C PATENTS

Received
FEB 03 1999
Group 2700

#19

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

HAND CARRY: GROUP 2757

BEASLEY, et al.

Atty. Ref.:

Serial No. 08/969,723

Group: 2757

Filed: November 12, 1997

Examiner: Dinh, D.

For: Interconnection System for Viewing and Controlling
Remotely Connected Computers with On-Screen Video
Overlay for Controlling of the Interconnection Switch

* * * * *

February 3, 1999

Assistant Commissioner for Patents
Washington, DC 20231

RECEIVED

FEB 03 1999

Sir:

**OFFICE OF PETITIONS
A/C PATENTS**

PETITION TO WAIVE THE RULES

Your Petitioner, Cybex Computer Products Corp., requests a waiver of one
aspect of 37 CFR 1.291 so the above-referenced Examiner can consider the

attached Protest, even though it is being filed after the Notice of Allowance has

been sent in the above-referenced application (hereafter the "Beasley

Application"). The factual bases for this Petition are set out in the attached Protest

(which is incorporated herein by reference) and are summarized below.

The first sentence of 37 CFR 1.291(a) provides the Petitioner with the
requisite standing to submit a protest in the referenced application and to have the

02/05/1999 SKENPER 00000005 08969723

01 FC:122

130.00 CP

Protest “referred to the examiner having charge of the subject matter involved,” in this case Examiner Dinh and the appropriate Group Director. Although the second sentence of 37 CFR 1.291(a) suggests that Protests should be filed before mailing of the Notice of Allowance in the underlying application, this is only in order to guarantee that the Protest “will be entered in the application file” and does not effect the standing of the Protester to have the protest referred to the Examiner under the provisions of 37 CFR 1.291(a) (first sentence).

The attached Protest could not have been filed before the Notice of Allowance was mailed (as suggested by the second sentence of 37 CFR 1.291(a)) since the Protester did not have any non-confidential knowledge of that pending Beasley Application until *after* the Notice of Allowance was sent. Moreover, “a protest submitted after the mailing of the notice of allowance will not knowingly be ignored if the protest included prior art documents which clearly anticipate or clearly render obvious one or more claims.” MPEP 1901.04; *see* attached Protest. Accordingly, the Patent Office should give full consideration to this Protest.

The present case is akin to *Harley v. Lehman*, 981 F.Supp. 9 (D.D.C. 1997) (courtesy copy is enclosed), in which a plaintiff sent a “threat” letter to a competitor and the competitor responded by filing a protest against the threatener's patent application. The Protest was filed on May 5, 1992 (three months after a

February 4, 1992 Notice of Allowance was mailed) and included two references

“for similar claims.” The Patent Office responded as follows:

“On July 23, 1992, five days before the 975 patent was to issue, the director of the responsible patent examining group sent a memorandum to the PTO's Office of Publications requesting that Harley's patent be withdrawn from issue because new art had been submitted in a protest. The next day, July 24, plaintiff's patent was withdrawn from issue.”

Id. at 10.

The *Harley* case is strikingly similar to the present case in that the Protester is filing a Protest after Notice of Allowance but before issuance, citing references for similar claims. The present Protester requests that the Patent Office exercise the same kind of discretion in the present case as was exercised in *Harley*--namely for the Group Director to request withdrawal of the Beasley Application from issue so the '212 patent can be fully and fairly considered.

The present petition is filed because the Examiner and Group Director should be allowed to fully consider the applicability of prior art U.S. Patent No. 5,732,212 (hereafter “the ‘212 patent”) to the claims of the pending Beasley Application. The ‘212 patent clearly anticipates the parent Beasley patent application (which became U.S. Patent No. 5,721,842) and provides a compelling basis for re-opening prosecution in the pending Beasley Application so the ‘212 patent prior art can be fully considered there.

Apex PC Solutions, Inc. ("Apex"), the owner of the Beasley '842 patent, has already sued your Petitioner on Beasley, U.S. Patent 5,721,842. Further, Apex, has made clear that it will also assert the Beasley Application against Cybex once it issues as a patent, even though Apex knows that the procedures necessary to provoke an interference between the '212 patent and the Beasley application have already been filed in the U.S. Patent Office. *See*, enclosed Protest at Attachment 10 (Proposed Stipulation at ¶5), and Petitioner's Request for Interference at Attachment 8.

In the interest of justice, the Beasley Application should not issue over a reference that may anticipate its claims. Nor should that application issue when the claimed subject matter may not even be owned by Apex. The Beasley Application should be stayed from grant so it can be examined substantively based on the '212 patent and the interference proceeding can resolve proper inventorship.

If the Beasley application is granted, Petitioner will be forced to expend substantial litigation fees to defend against a patent that (1) is likely invalid, (2) may not survive the upcoming Interference, or (3) may be owned by Petitioner rather than Apex at the conclusion of the Interference. The withdrawal of the Beasley Application from issue would allow the Examiner to substantially address

at least item (1) and would allow the Patent Office time to exercise its discretion to provoke an Interference without sending a patent out into the public with a presumption of validity that mischaracterizes its true condition. See, *Harley*, 981 F.Supp. at 11:

“It would be contrary to sound public policy for the PTO to issue a patent in the face of citations of prior art, especially because once a patent has issued, the presumption of validity attaches.”

It is important to note that, despite litigation discovery, Apex withheld the information needed by Petitioner to file this Protest earlier. Specifically, although Apex provided Petitioner’s trial counsel with knowledge of the existence of the Beasley Application, it did so *only* under strict confidentiality rules imposed by the Trial Court’s Protective Order. It was not until *after* the Notice of Allowance was mailed that Apex provided Petitioner with a non-confidential copy of the Beasley Application that Petitioner could legally use to file this Protest. Had Apex provided an earlier, non-confidential warning, this Protest may well have resulted sooner.

Because the ‘212 prior art reference is material to the subject matter of the ‘842 patent and its progeny, and is being used to provoke an interference with the

BEASLEY et al.

Serial No.: 08/969,723

'842 patent and the Beasley Application, the Petitioner respectfully requests that the Rules be waived to fully consider the attached Protest.

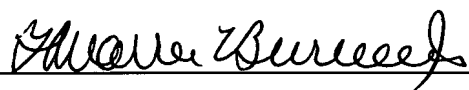
A copy of this filing is being served on Apex's counsel of record, by first class mail:

Rodney Tullett
Christensen, O'Connor, Johnson & Kindness, PLLC
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101-2347

A check to cover the petition fee is attached. Should the check not be found, or the amount thereof be incorrect, or should any other fees be or become necessary in connection with this Petition and the attached Protest, the Commissioner is authorized to charge the undersigned's Deposit Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
H. Warren Burnam, Jr.
Reg. No. 29,366

HWB:sks
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

Attachment 1

FILED ENTERED
LOGGED RECEIVED

★ MAR 30 1998 ★

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

APEX PC SOLUTIONS, INC., a Washington
corporation,

Plaintiff,

v.

CYBEX COMPUTER PRODUCTS
CORPORATION, an Alabama corporation,

Defendant.

No. C98-246Z

FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT

Jury Trial Requested

Plaintiff, Apex PC Solutions, Inc., brings this action for infringement of U.S. Patent No. 5,721,842 ("the '842 patent") in violation of 35 U.S.C. § 271. Plaintiff alleges the following facts upon actual knowledge with respect to itself and its own acts and upon information and belief as to all other matters.

I. PARTIES

1. Plaintiff, Apex PC Solutions, Inc. ("Apex"), is a corporation organized and existing under the laws of the state of Washington, having its principal place of business in Woodinville, Washington.

FIRST AMENDED COMPLAINT FOR PATENT
INFRINGEMENT - 1
CONFORM FACE SHEET
AND RETURN

F:\DOCS\38102\2601452PLD.DOC
Seattle

Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square - 1301 Fourth Avenue
Seattle, Washington 98101-1603
(206) 422-3150 • Fax: (206) 422-7690

2. Apex develops and markets computer hardware devices and systems, including switching systems that enable client/server network administrators to manage multiple servers from a single keyboard, video monitor and mouse configuration.

3. Defendant, Cybex Computer Products Corporation ("Cybex") is a corporation of the State of Alabama, having offices at Huntsville, Alabama.

4. Cybex is in the business of manufacturing, marketing, and distributing, directly or through its agents or affiliates, computer hardware systems, including systems for connecting computer workstations to remote computers. Cybex markets and distributes its infringing products within this judicial district and elsewhere.

II. JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States, particularly 35 U.S.C. § 271 and § 281. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

III. PATENT INFRINGEMENT

7. Apex is the owner, by assignment, of all right, title and interest in the '842 patent, which was duly issued on February 24, 1998, by the U.S. Patent and Trademark Office. A true copy of the '842 patent is attached hereto as Exhibit 1.

8. Cybex makes, has made, uses, offers for sale, and sells, within this judicial district and elsewhere in the United States, computer systems, including computer systems for connecting workstations to remote computers.

9. Cybex has directly and/or contributorily infringed, and/or induced infringement, of the '842 patent within this judicial district and elsewhere in the United States by making, having made, using, offering for sale, and selling systems embodying the inventions claimed in the '842 patent. Cybex's infringement of the '842 patent has been willful.

10. As a result of Cybex's infringement of the '842 patent, Apex has suffered and will continue to suffer damages in an amount to be established at trial. In addition, Apex has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Apex prays for the following alternative and cumulative relief:

A. Preliminary and permanent injunctions against further infringement of the '842 patent by Cybex;

B. An award of damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the direct infringement, contributory infringement, and/or inducement of infringement by Cybex of the '842 patent;

C. Treble damages pursuant to 35 U.S.C. § 284;

D. An award of reasonable attorneys' fees, interest, and costs; and

E. Such other and further relief as the Court deems just and proper.

V. JURY DEMAND

Apex requests a trial by jury on all issues triable by jury.

Dated this 30th day of March, 1998.

Davis Wright Tremaine LLP
Attorneys for Plaintiff Apex PC Solutions,
Inc.

By Stuart R. Dunwoody
Stuart R. Dunwoody
WSBA No. 13948

Attachment 2

BROWN & BAIN, P.A.

Attorneys at Law

ALAN H. BLANKENHEIMER
(602) 351-8420
blanken@brownbain.com

November 25, 1998

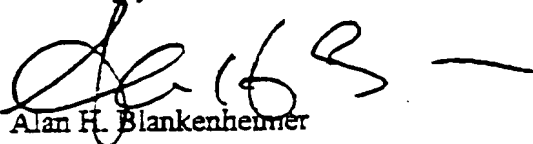
Apex PC Solutions, Inc. v. Cybex Computer Products and Rose Electronics

Dear Counsel:

I enclose the Notice of Allowance Apex has received on Application No. 08/869,723, a continuation of the '842 patent, entitled Interconnection System for Viewing and Controlling Remotely Connected Computers With On-Screen Video Overlay for Controlling of the Interconnection Switch.

We previously have produced to each of you the application and amendment specifying the claims that have now been allowed. Given that you are scheduled to depose two of the inventors beginning on December 9, to prevent duplication of such depositions or inefficient use of the inventors' time, we invite you to examine the inventors as may be appropriate concerning these allowed continuation claims.

Sincerely yours,


Alan H. Blankenheimer

Robert J. McCaughan, Jr.
ARNOLD WHITE & DURKEE
750 Bering Drive
Houston, Texas 77057-2198

James D. Berquist
NIXON & VANDERHYTE P.C.
8th Floor
1100 North Glebe Road
Arlington, Virginia 22201-4714

FACSIMILE

AHB/err

Enclosure

PHOENIX
TUCSON
PALO ALTOMAILING ADDRESS
P.O. BOX 400
PHOENIX, ARIZONA 85001-0400STREET ADDRESS
2901 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012T(602) 351-8000
F(602) 351-8618
www.brownbain.com

Robert J. McAughan, Jr.

-2-

November 25, 1998

Copy to:

Samuel F. Saracino
Vice President of Business Development
& General Counsel
Apex PC Solutions, Inc.
20031 - 142nd Ave., N.E.
Woodinville, Washington 98072

Stuart R. Dunwoody
DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101-1638

FACSIMILE

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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

RECEIVED
DOCKETING
NOV 16 1998
CHRISTENSEN, O'CONNOR
JOHNSON & KINDNESS PLLC

NOTICE OF ALLOWANCE AND ISSUE FEE DUE

CHRISTENSEN O'CONNOR JOHNSON
& KINDNESS
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101

APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED		
08/959,020	11/10/97	1	DINH, B	11/12/98		
First Named Applicant: SEASLEY, 35 USC 154(d) term ext. 0 DAYS.						
TITLE OF INVENTION: INTERCONNECTION SYSTEM FOR VIEWER, AND CONTROLLING REMOTELY CONNECTED COMPUTERS WITH ON-SCREEN VIDEO FEEDBACK FOR CONTROLLING A VIDEO INTERCONNECTION SYSTEM (AS APPLICABLE)						
PTO DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPL. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
0	35-959,008	101	UTILITY	YES	\$600.00	05/12/99

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT.
PROSECUTION ON THE MERITS IS CLOSED.

THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.

HOW TO RESPOND TO THIS NOTICE:

Review the SMALL ENTITY status shown above.
If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- If the status is changed, pay twice the amount of the FEE DUE shown above and notify the Patent and Trademark Office of the change in status, or
- If the status is the same, pay the FEE DUE shown above.

If the SMALL ENTITY is shown as NO:

- Pay FEE DUE shown above, or
- File verified statement of Small Entity Status before, or with, payment of 1/2 the FEE DUE shown above.

- Part B-Issue Fee Transmittal should be completed and returned to the Patent and Trademark Office (PTO) with your ISSUE FEE. Even if the ISSUE FEE has already been paid by charge to deposit account, Part B Issue Fee Transmittal should be completed and returned. If you are charging the ISSUE FEE to your deposit account, section "4b" of Part B-Issue Fee Transmittal should be completed and an extra copy of the form should be submitted.
- All communications regarding this application must give application number and batch number.
- Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

YOUR COPY

complete and mail this form, together with applicable fees, to:

Box ISSUE FEE
Assistant Commissioner for Patents
Washington, D.C. 20231

MAILING INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE. Block 4 should be completed where appropriate. All further correspondence including the Issue Fee except the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) indicating a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

PRESENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

LM21/1112

CHRISTENSEN O'CONNOR JOHNSON
& KINDNESS
1420 FIFTH AVENUE
SUITE 2600
SEATTLE WA 98101

Note: The certificate of mailing below can only be used for domestic mailings of the Issue Fee Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing.

Certificate of Mailing

I hereby certify that this Issue Fee Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above on the date indicated below.

(Depositor's name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
09/969,729	11/12/97	032	DINH, D	11/12/98
Inventor Named: BEASLEY, 35 USC 154(b) term ext. = 0 Days.				

DESCRIPTION: INTERCONNECTION SYSTEM FOR VIEWING AND CONTROLLING REMOTELY CONNECTED COMPUTERS WITH ON-SCREEN VIDEO OVERLAY FOR CONTROLLING OF THE INTERCONNECTION SWITCH (AS AMENDED)

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPL. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
1 AFXP111461	395-358.000	133	UTILITY	YES	\$660.00	02/12/99

Change of correspondence address or indication of "Fee Address" (37 CFR 1.362). Use of PTO form(s) and Customer Number are recommended, but not required.

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" Indication (or "Fee Address" Indication form PTO/SB/47) attached.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 _____
2 _____
3 _____

ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)
PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the PTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE (CITY & STATE OR COUNTRY)

Please check the appropriate assignee category indicated below (will not be printed on the patent)

☐ Individual ☐ corporation or other private group entity ☐ government

4a. The following fees are enclosed (make check payable to Commissioner of Patents and Trademarks):

☐ Issue Fee
☐ Advance Order - # of Copies _____

4b. The following fees or deficiency in these fees should be charged to:

DEPOSIT ACCOUNT NUMBER _____
(ENCLOSE AN EXTRA COPY OF THIS FORM)

☐ Issue Fee
☐ Advance Order - # of Copies _____

The COMMISSIONER OF PATENTS AND TRADEMARKS IS requested to apply the Issue Fee to the application identified above.

Authorized Signature

(Date)

NOTE: The Issue Fee will not be accepted from anyone other than the applicant, a registered attorney or agent, or the assignee or other party in interest as shown by the records of the Patent and Trademark Office.

Burden Hour Statement This form is estimated to take 0.2 hours to complete. Time will vary depending on the needs of the individual case. Any comments on the amount of time required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND FEES AND THIS FORM TO: Box Issue Fee, Assistant Commissioner for Patents, Washington D.C. 20231

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMIT THIS FORM WITH FEE

11

**INFORMATION CITED BY APPLICANT(S) THAT MAY BE MATERIAL
TO THE PROSECUTION OF THE SUBJECT APPLICATION**

Applicant: D.L. Beasley et al. Attorney Docket No: APXP111461
 Serial No: 08/969,723 Group Art Unit: 2757
 Filed: November 12, 1997 Examiner: D. Dinh
 Title: CIRCUIT FOR PRODUCING OVERLAID VIDEO SIGNALS

U.S. PATENT DOCUMENTS

None

FOREIGN PATENT DOCUMENTS

*Examiner Initial	ID	Document No.	Publication Date	Country	Translation Provided Yes No
<u>Z</u>	F1	G 93 03 716.3	11/04/1993	Germany	X

OTHER INFORMATION

(Including Author, Title, Date, Pertinent Pages, Etc.)

*Examiner Initial	ID	Document Information
<u>[Signature]</u>	O1	Motorola Semiconductor Technical Data, "Advanced Monitor On-Screen Display CMOS" Rev. 2, February 1997.
<u>[Signature]</u>	O2	General Instrument 2750R Satellite Receiver User's Guide 2700 Series, Publication No. 72089-1, Rev. C, April 1990.

Examiner	Date Considered
<u>D. DINH</u>	<u>11/5/98</u>

*Examiner: Initial if reference considered, whether or not citation is in conformance with M.P.E.P. § 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

RCT:jla

Serial Number: 08/969,723
Art Unit: 2757

*would you
like this draft
doctored?
↓ ↓ ↓*

-2-

DETAILED ACTION

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the Issue Fee.

Pursuant to MPEP 606.01, the title has been changed to read:
--INTERCONNECTION SYSTEM FOR VIEWING AND CONTROLLING REMOTELY
CONNECTED COMPUTERS WITH ON-SCREEN VIDEO OVERLAY FOR CONTROLLING OF
THE INTERCONNECTION SWITCH--.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (703) 305-9655. The examiner can normally be reached on Monday-Thursday from 7:00 AM - 4:30 PM. The examiner can also be reached on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (703) 305-4792.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:
Commissioner of Patents and Trademarks
Washington, DC 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

(703) 308-5359 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II,
2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

D. Dinh
Dung Dinh
Primary Examiner
November 6, 1998



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	HEARS	FIRST NAMED APPLICANT	D	ATTORNEY REQUEST NO.
---------------	-------------	-------	-----------------------	---	----------------------

LM21/1112
CHRISTENSEN O'CONNOR JOHNSON
& KINDNESS
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101

EXAMINER

ART UNIT	PAPER NUMBER
----------	--------------

11/12/98

DATE MAILED:

NOTICE OF ALLOWABILITY

PART I.

- ☒ This communication is responsive to Term extension + amendment filed 10-4-98
- ☒ All the claims being allowable. PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice Of Allowance And Issue Fee Due or other appropriate communication will be sent in due course.
- ☒ The allowed claims are 11-35, 37-43
- ☒ The drawings filed on 11-13-97 are acceptable.
- ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received. ☐ not been received. ☐ been filed in parent application Serial No. filed on
- ☒ Note the attached Examiner's Amendment.
- ☐ Note the attached Examiner Interview Summary Record, PTO-413.
- ☐ Note the attached Examiner's Statement of Reasons for Allowance.
- ☐ Note the attached NOTICE OF REFERENCES CITED, PTO-892.
- ☒ Note the attached INFORMATION DISCLOSURE CITATION, PTO-1443.

PART II.

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE THREE MONTHS FROM THE "DATE MAILED" indicated on this form. Failure to timely comply will result in the ABANDONMENT of this application. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

- ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
- ☐ APPLICANT MUST MAKE THE DRAWING CHANGES INDICATED BELOW IN THE MANNER SET FORTH ON THE REVERSE SIDE OF THIS PAPER.
 - ☐ Drawing informalities are indicated on the NOTICE RE PATENT DRAWINGS, PTO-848, attached hereto or to Paper No. . CORRECTION IS REQUIRED.
 - ☐ The proposed drawing correction filed on has been approved by the examiner. CORRECTION IS REQUIRED.
 - ☒ Approved drawing corrections are described by the examiner in the attached EXAMINER'S AMENDMENT. CORRECTION IS REQUIRED.
 - ☐ Formal drawings are now REQUIRED.

Any response to this letter should include in the upper right hand corner, the following information from the NOTICE OF ALLOWANCE AND ISSUE FEE DUE: ISSUE BATCH NUMBER, DATE OF THE NOTICE OF ALLOWANCE, AND SERIAL NUMBER.

Attachments:

- ☒ Examiner's Amendment
- ☐ Examiner Interview Summary Record, PTO-413
- ☐ Reasons for Allowance

- ☐ Notice of Informal Application, PTO-152
- ☐ Notice re Patent Drawings, PTO-848
- ☐ Listing of Bonded Draftsman

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PAGE.06

*** TOTAL PAGE.08 ***

Attachment 3

ORIGINAL

THE HONORABLE THOMAS S. ZILLY

FILED ENTERED
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FILED ENTERED
LOGGED RECEIVED

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

SEP 18 1998
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

APEX PC SOLUTIONS, INC., a Washington
corporation,

Plaintiff,

v.

CYBEX COMPUTER PRODUCTS
CORPORATION, an Alabama corporation.

Defendant.

No. C98-246Z and
C98-245Z

AMENDED STIPULATED
PROTECTIVE ORDER

APEX PC SOLUTIONS, INC., a Washington
corporation

Plaintiff,

v.

ROSE ELECTRONICS, a Texas general
partnership,

Defendant.

On July 2, 1998, the Court entered a "Stipulated Protective Order" in Apex PC Solutions, Inc. v. Rose Electronics (Case No. C98-245Z), upon stipulation of parties Apex PC Solutions and Rose Electronics. On July 7, 1998, Apex PC Solutions v. Rose Electronics was consolidated with

1 Apex PC Solutions, Inc. v. Cvbox Computer Product Corporation (Case No. C89-246Z) for all
2 pretrial proceedings. The parties in the consolidated proceedings have advised the Court that
3 discovery is likely to result in the disclosure of confidential or proprietary information as to which
4 the producing party has a legitimate interest in preventing improper use or unnecessary disclosure,
5 and that a uniform order applicable to all parties in the consolidated proceedings would be
6 appropriate. Therefore, upon stipulation of the parties and good cause appearing therefor, the
7 "Stipulated Protective Order," entered July 2, 1998 is HEREBY VACATED, and

8 IT IS HEREBY ORDERED:

9 1. As used in this Protective Order, the term "Discovery Material" encompasses, but is
10 not limited to: any type of document or testimony; any taped, recorded, filmed, written or typed
11 matter, including the originals and all marked copies, whether different from the originals by
12 reason of any notation made on such copies or otherwise; all deposition testimony; all
13 interrogatories, document requests, and requests for admission, including all responses thereto; and
14 any physical objects or other items or any other information contained within or gained by
15 inspection of any tangible thing.

16 2. As used in this Protective Order, the terms "this action," "this civil action," and "this
17 litigation" shall mean the above-captioned lawsuit and no other proceeding.

18 3. "Confidential Information" is defined herein as all Discovery Material, motions,
19 briefs, memoranda or other papers produced by the producing party or filed with this Court in
20 connection with this action provided the producing party has a good faith basis to deem such
21 information as proprietary or confidential and to believe that the disclosure of the information
22 would be detrimental to the business of the producing party. Confidential Information does not
23 include information which: (i) was, is or becomes public knowledge, without violation of this
24 Protective Order, a violation of law or a breach of duty or obligation owed to the party asserting
25 confidential status; or (ii) is acquired from a third party lawfully possessing such information and
26 having no obligation to maintain the information in confidence; or (iii) for information designated

1 as Confidential Information by the producing party, was lawfully possessed by the receiving party
2 prior to discovery in this action.

3 4. "Confidential Information--For Outside Counsel Only" is defined herein as all
4 Discovery Material, motions, briefs, memoranda or other papers produced by the producing party
5 or filed with this Court in connection with this action, if such Confidential Information satisfies
6 paragraph 3 above and:

7 (a) constitutes or discloses Confidential Information of another party which is subject to
8 a legal obligation on the part of the producing party to protect the confidentiality of the other
9 party's information;

10 (b) constitutes or discloses Confidential Information regarding any of the producing
11 party's business plan strategies or other commercial information (including without limitation cost,
12 profit and sales data);

13 (c) constitutes or discloses technical or design information of the producing party's
14 products or potential products; or

15 (d) constitutes Discovery Material designated as Confidential Information of [producing
16 party]--For Outside Counsel Only, under the provision of paragraph 14.

17 5. Discovery Material asserted to contain Confidential Information shall be designated
18 by the producing party with the legend "CONFIDENTIAL INFORMATION," or a comparable
19 notice on those pages or those portions claimed to contain such information. Discovery Material
20 asserted to contain Confidential Information--For Outside Counsel Only shall be designated by
21 producing party with the legend "CONFIDENTIAL INFORMATION--FOR OUTSIDE
22 COUNSEL ONLY," or a comparable notice on those pages or those portions claimed to contain
23 such information.

24 6. In the event that a producing party discloses or proposes to disclose Discovery
25 Material that another party has reasonable grounds to claim as "CONFIDENTIAL
26 INFORMATION" or as "CONFIDENTIAL INFORMATION -- FOR OUTSIDE COUNSEL

1 ONLY" and the producing party does not so designate the information, the party claiming such
2 status for the information shall notify the producing party and any other parties to this action of
3 such claim. The parties to this action, the claiming party and the producing party shall take
4 reasonable steps to cause the appropriate legend to be placed on such Discovery Material. The
5 claiming party shall bear the reasonable expenses (including fees for clerical help and expenses for
6 copies, telecopying, materials, telephone, delivery and mail) incurred by the producing party and
7 any other party to this action in complying with the previous sentence.

8 7. In the absence of written permission from the producing party or an order of this
9 Court, any information marked with the legend "CONFIDENTIAL INFORMATION," or a
10 comparable notice, shall not be disclosed to or discussed with any person other than: 1) outside
11 counsel for the parties, including necessary support personnel of counsel and reporters taking
12 testimony involving such Confidential Information and their support personnel; 2) outside experts
13 who are engaged for the purpose of this civil action by the party receiving such information, and
14 their support personnel if, after the receiving party has given the producing party ten (10) business
15 days' notice that such information shall be provided to any expert designated (by name, affiliation
16 and credentials, including recent work history) in the notice, the producing party has not moved for
17 a protective order precluding the disclosure of the information to the designated expert; 3) the
18 following in-house counsel for Apex PC Solutions, Inc. ("Apex"): Samuel F. Saracino; 4) the
19 partner for Rose Electronics: Peter Macourek; and 5) the following officer of Cybex Computer
20 Products Corporation: Doyle C. Weeks. C.F.O.

21 8. In the absence of written permission from the producing party or an order of this
22 Court, any information marked with the legend "CONFIDENTIAL INFORMATION--FOR
23 OUTSIDE COUNSEL ONLY," or a comparable notice, shall not be disclosed to or discussed with
24 any person other than: 1) outside counsel for the parties, including necessary support personnel of
25 counsel and reporters taking testimony involving such Confidential Information--For Outside
26 Counsel Only and their support personnel; 2) outside experts who are engaged for the purpose of

1 this civil action by the party receiving such information, and their support personnel if, after the
2 receiving party has given the producing party ten (10) business days' notice that such information
3 shall be provided to any expert designated (by name, affiliation and credentials, including recent
4 work history) in the notice, the producing party has not moved for a protective order precluding the
5 disclosure of the information to the designated expert. The notification to outside experts required
6 under paragraphs 7 and 8 need only be given once with respect to a specific outside expert and, if
7 the producing party does not timely move for a protective order precluding the disclosure to that
8 expert, all information designated as "Confidential Information" or "Confidential Information--For
9 Outside Counsel Only" may be disclosed to that expert.

10 9. While Confidential Information designated as Confidential Information--For Outside
11 Counsel Only shall be used solely for the purpose of this litigation and shall be restricted solely to
12 the persons in paragraph 8, any Outside Counsel, outside experts who are given access to the
13 producing party's Confidential Information designated as Confidential Information--For Outside
14 Counsel Only are permitted to disclose their conclusions (but not the underlying technical data,
15 information or documents or the commercial data, information or documents) to a Control Group
16 with the receiving party on a need to know basis for the purposes of this litigation, where:

17 (a) the Control Group for Apex consists of up to three permanent employees, officers or
18 directors of Apex (to be identified to producing party's Outside Counsel in advance of any such
19 disclosure).

20 (b) the Control Group for Rose Electronics consists of the partners, Peter Macourek and
21 David Rahvar and one permanent employee (to be identified to producing party's outside counsel
22 in advance of any such disclosure).

23 (c) the Control Group for Cybex Computer Products Corporation consists of up to three
24 permanent employees, officers or directors of Cybex to be identified to producing party's Outside
25 Counsel in advance of any such disclosure).

1 10. Confidential Information or Confidential Information--For Outside Counsel Only
2 shall not be available to any person qualified under the terms of this order unless he or she shall
3 have first read this Order and the Confidentiality Undertaking attached as Exhibit A hereto, and
4 acknowledged that he or she has agreed to be bound by this Order and the terms contained in the
5 Confidentiality Undertaking by signing the Confidentiality Undertaking. Clerical and secretarial
6 personnel of Outside Counsel or outside experts need not sign such an undertaking if their
7 employers or superiors have done so. The party securing the written agreement of a person under
8 this paragraph shall serve a copy of such agreement on all parties to this action and on any other
9 producing party to whose protected information the person signing the agreement will be given
10 access.

11 11. All information marked or designated as "CONFIDENTIAL INFORMATION" or
12 "CONFIDENTIAL INFORMATION--FOR OUTSIDE COUNSEL ONLY" shall not be used by
13 any recipient or disclosed to anyone for any purpose other than in connection with this litigation,
14 and shall not be communicated in any manner, directly or indirectly, to anyone other than a person
15 qualified to receive such material under the terms and conditions set forth herein, unless and until
16 the restrictions herein are modified by order of this Court.

17 12. Before a court reporter receives any Confidential Information or Confidential
18 Information--For Outside Counsel Only, he or she shall have first read this order and agreed in
19 writing or on the record to be bound by the terms thereof.

20 13. In the event that any Confidential Information or Confidential Information--For
21 Outside Counsel Only is included with, or the contents thereof are in any way disclosed in any
22 pleading, motion, deposition, transcript or other paper filed with the Clerk of this Court, the
23 Confidential Information or Confidential Information--For Outside Counsel Only shall be filed and
24 kept under seal by the Clerk of this Court until further order of this Court; provided, however, that
25 the papers shall be furnished to the Court and outside counsel of record for the parties.
26 Confidential Information and Confidential Information--For Outside Counsel Only shall not be

1 copied or otherwise reproduced by a receiving party, except for use by or transmission to qualified
2 recipients, without the written permission of the producing party, or in the alternative, by further
3 order of this Court. Nothing herein shall, however, restrict a qualified recipient from making
4 working copies, abstracts, digests and analyses of such information for use in connection with this
5 action and such working copies, abstracts, digests and analyses shall be deemed to have the same
6 level of protection under the terms of this Order. Further, nothing herein shall restrict a qualified
7 recipient from converting or translating such information into machine-readable form for
8 incorporation in a data retrieval system used in connection with this action, provided that access to
9 such information, in whatever form stored or reproduced, shall be limited to qualified recipients.

10 14. If the producing party through inadvertence produces any Confidential Information or
11 Confidential Information--For Outside Counsel Only without labeling or marking or otherwise
12 designating it as such in accordance with the provisions of this Protective Order, the producing
13 party may give written notice to the receiving party that the document or thing produced is deemed
14 Confidential Information or Confidential Information--For Outside Counsel Only and should be
15 treated as such in accordance with the provisions of this Protective Order. The receiving party
16 must treat such documents and things with the noticed level of protection from the date such notice
17 is received. Disclosure, prior to the receipt of such notice of such information, to persons not
18 authorized to receive such information shall not be deemed a violation of this Protective Order.

19 15. Any transcript containing Confidential Information or Confidential Information--For
20 Outside Counsel Only shall be designated as containing such information within thirty (30) days of
21 receipt of the transcript by the producing party or else the information shall not be subject to this
22 Protective Order. Such designations shall be made either on the record or by written notice to the
23 parties to this action and any other receiving party of the specific portions of the testimony that are
24 to be treated as confidential. The appropriate legend shall be placed on the cover page of a
25 transcript and, if specific portions of the transcript rather than its entirety are to be designated as
26

1 confidential, the portions so designated shall be identified in a letter, memorandum or other notice
2 to be bound with or appended to each copy of the transcript.

3 16. Any party affected by this Protective Order may challenge a designation of Discovery
4 Material as Confidential Information subject to either level of protection under this Order. The
5 affected party challenging such designation has the burden of (a) notifying opposing counsel and
6 the producing party of such a challenge not less than ten (10) business days before making an
7 appropriate motion to the Court; and (b) filing such a motion and (subject to the Court's discretion)
8 obtaining a hearing upon such motion. In connection with such motion, the party claiming
9 confidential status shall have the burden of establishing the need for such status. Pending such
10 determination by the Court, material designated as confidential shall be treated as provided in this
11 Protective Order.

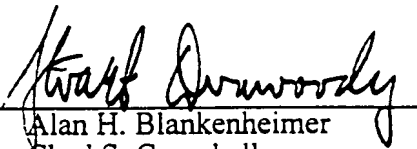
12 17. Nothing in this Protective Order shall abridge the right of any person to seek judicial
13 review or to pursue other appropriate judicial action to seek a modification or amendment of this
14 order.

15 18. In the event that the receiving party is requested or required to disclose any of the
16 "Confidential Information" or "Confidential Information -- For Outside Counsel Only", the
17 receiving party shall provide the producing party with notice of that request or requirement so that
18 the producing party may seek a protective order or other appropriate remedy.

19 19. Within sixty (60) days after final termination of this action, each party shall assemble
20 all Discovery Material furnished and designated by a producing party as containing Confidential
21 Information or Confidential Information--For Outside Counsel Only and shall either (i) return such
22 documents and things to the producing party, or (ii) destroy the Discovery Material (in which
23 event destruction shall be certified in writing to the producing party). Outside counsel of record
24 for each party shall be entitled to retain all pleadings, motion papers, legal memoranda,
25 correspondence and work product.
26

1 20. Any non-party who produces Discovery Material in connection with this litigation
2 may obtain the protection provided by this order by designating the Discovery Material in
3 accordance with paragraphs 5, 14 or 15.

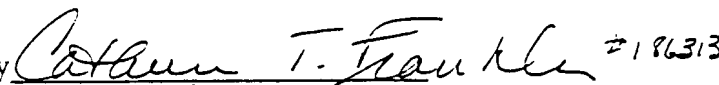
4
5 By


Alan H. Blankenheimer
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9 Stuart R. Dunwoody
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11 1501 Fourth Avenue
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12 Attorneys for Plaintiff Apex PC Solutions. Inc.

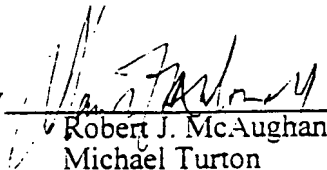
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14
15 By

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18 Seattle, Washington 98111-3926

19 J. Scott Davidson
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22 Attorneys for Defendant Cybex Computer Products Corporation
23
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David T. McDonald
MCDONALD & QUACKENBUSH
3300 First Interstate Center
999 Third Avenue
Seattle, Washington 98104

Attorneys for Defendant Rose Electronics


9 SO ORDERED:

10 Dated this 18th day of Sept, 1998.


HONORABLE THOMAS SIZILLY
UNITED STATES DISTRICT COURT JUDGE

15 Presented by:

16 By


Alan H. Blankenheimer
Chad S. Campbell
Andrew Y. Chiu
BROWN & BAIN, P.A.
2901 North Central Avenue
Phoenix, Arizona 85012

Stuart R. Dunwoody
DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101-1688

Attorneys for Plaintiff Apex PC Solutions, Inc.

EXHIBIT A - CONFIDENTIALITY UNDERTAKING

1. I have read and understand the attached Stipulated Protective Order re: Confidential Information that has been entered in APEX PC SOLUTIONS, INC. V. CYBEX COMPUTER PRODUCTS CORPORATION and ROSE ELECTRONICS, Cause Nos. C98-246Z and C98-245Z in the U.S. District Court for the Western District of Washington in Seattle.

2. I understand that I may be given access to Confidential Information or Confidential Information--For Outside Counsel Only, and in consideration of that access, I agree that I shall be bound by all the terms of the Protective Order.

3. I understand that I am to retain all originals and copies of Confidential Information or Confidential Information--For Outside Counsel Only in a secure manner and that all copies will be returned or destroyed within sixty (60) days after termination of this action.

4. I understand that I will not disclose or discuss Confidential Information or Confidential Information--For Outside Counsel Only with any person other than those persons who have signed Confidentiality Undertakings and only to the extent that such persons are permitted to have access to such material pursuant to the terms of the attached Protective Order.

5. I understand that all Confidential Information or Confidential Information--For Outside Counsel Only shall be used solely for the purposes of this action and shall not, directly or indirectly, be used for any other purpose and that any use of Confidential Information or Confidential Information--For Outside Counsel Only, or any information obtained therefrom, in any manner contrary to the provisions of the Protective Order will subject me to the sanctions of the Court.

Signature: _____

Name: _____

Firm Address: _____

Position: _____

Date: _____

Attachment 4

Any protest can be submitted by mail to the Assistant Commissioner for Patents, Washington, D.C. 20231, and should be directed to the attention of the Director of the particular examining group in which the application is pending. If the protestor is unable to specifically identify the application to which the protest is directed, but, nevertheless, believes such an application to be pending, the protest should be directed to the attention of the Office of Petitions, Crystal Park 1, Room 520, along with as much identifying data for the application as possible. Protests which do not adequately identify a pending patent application will be returned to the protestor and will not be further considered by the Office.

Where a protest is directed to a reissue application for a patent which is involved in litigation, the outside envelope and the top right-hand portion of the protest should be marked with the words "REISSUE LITIGATION." The notations preferably should be written in a bright color with a felt point marker. Any "REISSUE LITIGATION" protest mailed to the Office should be so marked and mailed to BOX 7. However, in view of the urgent nature of most "REISSUE LITIGATION" protests, protestor may wish to hand-carry the protest to the appropriate area in order to ensure prompt receipt and to avoid any unnecessary delays. In litigation-type cases, all replies should be hand-carried to the appropriate area in the Office.

INITIAL PROTEST SUBMISSION MUST BE COMPLETE

A protest must be complete and contain a copy of every document relied on by protestor, whether the document is a prior art document, court litigation material, affidavit, or declaration, etc., because a protestor will *not* be given an opportunity to supplement or complete any protest which is incomplete. Active participation by protestor ends with the filing of the initial protest, as provided in 37 CFR 1.291(c), and no further submission on behalf of protestor will be acknowledged or considered, except for additional prior art, or unless such submission clearly raises new issues which could not have been earlier presented. Protests which will not be entered in the application file include those further submissions in violation of 37 CFR 1.291(c) by which protestor seeks to participate in the examination process. For example, mere arguments relating to an Office action or an applicant's reply would not qualify as a new protest. Likewise, additional comments seeking to bring in further or even

new data or information with respect to an issue previously raised by protestor would not qualify as a new protest.

Even new protests which also argue Office actions or replies or any matter beyond the new issue should not be accepted. Improper protests will be returned by the Examining Group Director. While improper protests will be returned, a new protest by an earlier protestor will be proper and can be entered if it is clearly limited to new issues which could not have been earlier presented, and thereby constitutes a new protest.

As indicated in 37 CFR 1.291(b)(3), a protest must be accompanied by a copy of each prior art document relied on in order to ensure consideration by the examiner, although a protest without copies of prior art documents will not necessarily be ignored. While a protest without copies of documents will not necessarily be ignored, the submission of such documents with the protest will obviously expedite and ensure consideration of the documents, which consideration might not otherwise occur. Further, some documents which are available to protestor may not be otherwise available to the Office.

Every effort should be made by a protestor to serve a copy of the protest upon the attorney or agent of record or upon the applicant if no attorney or agent is of record. Of course, the copy served upon applicant or upon applicant's attorney or agent should be a complete copy including a copy of each prior art or other document relied on in the same manner as required by 37 CFR 1.291(a) for the Office copy. The protest filed in the Office should reflect, by an appropriate "Certificate of Service," that service has been made as provided in 37 CFR 1.291(a). Only in those instances where service is not possible should the protest be filed in duplicate in order that the Office can attempt service.

1901.04 When Should the Protest Be Submitted

A protest under 37 CFR 1.291(a) must be submitted prior to the mailing of a notice of allowance under 37 CFR 1.311 and the application must be pending when the protest and application file are brought before the examiner in order to be ensured of consideration. As a practical matter, any protest should be submitted as soon as possible after the protestor becomes aware of the existence of the application to which the protest is to be directed. By submitting a protest early in the examination process, i.e., before the Office acts on the application if

possible, the protestor ensures that the protest will receive maximum consideration and will be of the most benefit to the Office in its examination of the application. A protest submitted after the mailing of the notice of allowance will not be ignored if the protest includes prior art documents which clearly anticipate or clearly render obvious one or more claims. However, the likelihood of consideration of a protest decreases as the patent date approaches.

A protest submitted prior to the mailing of a notice of allowance under 37 CFR 1.311 will be entered in the application file. A protest filed after final rejection will be considered if the application is still pending when the protest and application are provided to the examiner. However, prosecution will not ordinarily be reopened after final rejection if the prior art cited in the protest is merely cumulative of the prior art cited in the final rejection. If a protest is not submitted prior to the mailing of a notice of allowance under 37 CFR 1.311 it will be acknowledged as set forth in MPEP § 1901.05 only if a self-addressed postcard is included with the protest, and referred to the examiner having charge of the subject matter involved for handling as set forth in MPEP § 1901.06.

A protest with regard to a reissue application should be filed within the 2-month period following announcement of the filing of the reissue application in the *Official Gazette*. If, for some reason, the protest of the reissue application cannot be filed within the 2-month period provided by 37 CFR 1.176, the protest can be submitted at a later time, but the protestor must be aware that reissue applications are "special" and a later filed protest may be received after action by the examiner. Any request by a protestor in a reissue application for an extension of the 2-month period following the announcement in the *Official Gazette* will be considered only if filed in the form of a petition under 37 CFR 1.182 and accompanied by the petition fee set forth in 37 CFR 1.17(h). The petition under 37 CFR 1.182 and the petition fee must be filed prior to the expiration of the 2-month period provided by 37 CFR 1.176. The petition must explain why the additional time is necessary and the nature of the protest intended. A copy of such petition must be served upon applicant in accordance with 37 CFR 1.248. The petition should be directed to the appropriate examining group which will forward the petition to the Office of the Deputy Assistant Commissioner for Patent Policy and Projects for decision. Any such petition will be critically reviewed

as to demonstrated need before being granted since the delay of examination of a reissue application of another party is being requested. Accordingly, the requests should be made only where necessary, for the minimum period required, and with a justification establishing the necessity for the extension.

If the protest is a "REISSUE LITIGATION" protest, it is particularly important that it be filed early if protestor wishes it considered at the time the Office first acts on the application. Protestors should be aware that the Office will entertain petitions under 37 CFR 1.183, when accompanied by the petition fee set forth in 37 CFR 1.17(h), to waive the 2-month delay period of 37 CFR 1.176 in appropriate circumstances. Accordingly, protestors to reissue applications cannot automatically assume that the full 2-month delay period of 37 CFR 1.176 will always be available.

If a protest is filed in a reissue application related to a patent involved in a pending interference proceeding, the reissue application should be referred to the Office of the Deputy Assistant Commissioner for Patent Policy and Projects before considering the protest and acting on the application. See also MPEP § 1441 as to the filing of a protest in a reissue application.

1901.05 Initial Office Handling and Acknowledgment of Protest

PROTESTS REFERRED TO EXAMINER

Protests filed against pending applications will be referred to the examiner having charge of the subject matter involved. 37 CFR 1.291(a). A protest specifically identifying the application to which it is directed will be entered in the application file, if (1) the protest is submitted prior to the mailing of a notice of allowance under 37 CFR 1.311 (see MPEP § 1901.04) and (2) a copy has been served on applicant in accordance with 37 CFR 1.248, or a duplicate copy is filed with the Office in the event service is not possible. 37 CFR 1.291(a).

A protest where the application is specifically identified, which is submitted in conformance with 37 CFR 1.291(a) and (b), will be considered by the Office.

PROTEST DOES NOT INDICATE SERVICE

If the protest filed in the Office does not, however, indicate service on applicant or applicant's attorney or agent, and is not filed in duplicate, then the Office will undertake to determine whether or not service has been

Attachment 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

APEX PC SOLUTIONS, INC.,
a Washington corporation,

Plaintiff,

v.

CYBEX COMPUTER PRODUCTS, CORP.,
an Alabama corporation,

Defendant.

No. C98-246Z

**DECLARATION OF
ROBIN L. ANDERSON**

I, Robin L. Anderson, declare and state under oath as follows:

1. My name is Robin L. Anderson and I am the President of Fox Network Systems, Inc. of Rockville, Maryland.
2. In 1979, I became an owner of Labat-Anderson, Inc. (LAI), an environmental and information services organization primarily servicing the Federal Government. In late 1990 to early 1991, Fox Network Systems, Inc. (Fox) was started by Ronald J. Perholtz to provide computer networking services to LAI who was Fox's primary customer. Fox managed LAI's computer network of approximately 120 PCs.

Declaration of Robin L. Anderson

1

Williams, Kastner & Gibbs PLLC
Two Union Square, Suite 4100
Mail Address: P.O. Box 21926
Seattle, Washington 98111-3926
(206) 628-6600

1 3. Shortly after Fox began managing LAI's network, two problems emerged. First, when
2 the LAI network went down at night, no one knew of the failure until the next morning when the
3 employees arrived for work. This resulted in employee down time and loss of revenue. In response to
4 this problem, Fox invented, manufactured and provided a remote alert system to LAI which alerted
5 Ronald J. Perholtz at his home in Rockville, Maryland of any system crash at the LAI facility. This
6 permitted Mr. Perholtz to get an early warning when system crashes occurred so Mr. Perholtz could
7 get to the LAI facility and fix the system problem before employees arrived for work.

8 4. A second problem then emerged when the network went down, Mr. Perholtz had to
9 drive from his home in Rockville, Maryland, to the LAI facility to fix the network. Although some
10 remote computer communication products were available commercially, none could bring signals from
11 dead (crashed) computers to Mr. Perholtz's home in Rockville. Fox's Key-View[®] product was designed
12 to bring signals from a remote dead computer (such as at the LAI facility) to a local site (such as at
13 Mr. Perholtz's home in Rockville).

14 5. In 1992, I sold my stake in LAI. In 1994, I invested in Fox, and was named president of
15 Fox.

16 6. On October 23, 1992, Fox filed a patent application in the United States Patent and
17 Trademark Office on the remote alert system. This patent application matured into U.S. Patent No.
18 5,566,339, attached as Appendix A.

19 7. On January 13, 1994, Fox filed a patent application on the Key-View[®] product, derived
20 in part from the earlier application filed on October 23, 1992. This patent application matured into
21 U.S. Patent No. 5,732,212 ("the '212 patent"), attached as Appendix B.

22 8. As shown in Figure 1 of the '212 patent, the Key-View[®] product described in the patent
23 allowed a workstation (of the type including a keyboard 4, a cursor control device 4A, and a video
24 monitor 3) at a remote site 1 to communicate with any one of a number of remotely located computers
25 10, 16, 20 of corresponding host systems 6, 12, 17, etc., using the telephone system as a central,
26 programmable switching circuit. As described in the '212 patent, the user at the remote site 1 could
27 select communication with any one of the multiple host systems 6, 12, 17, etc. such that the keyboard
28 and cursor control device signals are supplied to the selected remote host system 6, 12, 17, etc.

1 9. In the '212 patent, the user of the remote site 1 uses an on-screen display menu option to
2 provide overlaid video signals on the video display 3 of the remote site 1 to select a host PC. This
3 menu option is described in several places throughout the '212 patent, for instance at Col. 44, line 22-
4 60. There, the patent describes:

5 “[a] second menu option 'Call Host Site' 703 permits the user to cause
6 their Remote PC to call and link to a desired Host PC. When this menu
7 option is selected, a call list of Host Units that may be selected is
8 displayed 704. This call list is created and maintained as part of Setup
9 System 702 processing. When a Host Unit on the list is selected, the
10 program initiates linkage processing to the selected Host Site, then links to
the requested Host Unit. . . In a normal access mode, the user has full
keyboard and video access to the Host Unit.”

11 The operation of the pop-up menu is also described in detail at Col. 47, line 44 through Col. 48,
12 line 57.

13 10. In the '212 patent, the PC processor 2 detects keyboard and cursor control device signals
14 entered by the user in response to the overlaid video menu and forwards them to modem 5, which
15 passes then through a telephone switch to the host computer.

16 11. Referring to Figure 1 of the '212 patent and the associated specification descriptions
17 thereof, the '212 patent discloses:

18 “a central programmable switch for connecting signals received on
19 a number of inputs to a number of outputs”

20 This can be viewed as either CPUs 106 and 114 (together with input elements 103 and 116) of
21 host unit 00 for connecting signals from the remote site 1 to one of the host processors 10, 16, 20, etc.
22 or as the telephone switch between modem 5 and modem 7 for connecting inputs at corresponding
23 remote site telephone lines to outputs at corresponding host site telephone lines (see ¶30).

24 12. The '212 patent also discloses:

25 “a first signal conditioning circuit for receiving signals produced by the
26 keyboard and cursor control device of the workstation and for transmitting
27 the keyboard and cursor control device signals to an input of the central
28 switch, the first signal conditioning circuit also including an on-screen
programming circuit that produces overlaid video signals on the video
monitor of the workstation, means for detecting keyboard and cursor

1 control device signals entered in response to the overlaid video signals and
2 means for transmitting the keyboard and cursor control signal entered in
3 response to the overlaid video signals to the central switch in order to
4 control the operation of the central switch. . .”

5 namely, the remote PC processor 2 and modem 5. The remote PC processor 2 receives signals
6 produced by keyboard 4 and cursor control device 4A and transmits them to the telephone switch via
7 modem 5 and ultimately to the host unit 20. The PC processor 2 includes an on-screen menu feature to
8 assist the user in selecting a host system, as described in ¶9 above. The PC processor 2 also detects
9 keyboard and cursor signals entered in response to the overlaid video and transmits those signals to the
10 central switch via the modem 5.

11 13. The '212 patent also discloses:

12 “a second signal conditioning circuit coupled to the remotely located
13 computers for receiving the keyboard and cursor control device signals
14 from an output of the central switch and for supplying the keyboard and
15 cursor control signals to the remote computer.”

16 This element can be viewed as either host unit 00 which receives the keyboard and cursor
17 signals such that the “user has full keyboard and video access to the host unit [Col. 44, lines 50-52],” or
18 as keyboard/mouse/video interfaces of host unit 00 receiving lines 637, 638, and 639 from host PC
19 (Figure 5C).

20 14. The '212 patent also discloses routing video signals produced by the remotely located
21 host computer 6, 12, 17, etc. to the workstation (video/keyboard/mouse 3/4/4A) via lines 639 and 635
22 (Figure 5C), for example. These video signals are transmitted to the remote PC processor 2 via the
23 same switch connections (between modem 5 and modem 7) as are the keyboard and cursor signals
24 being transmitted to the host system 6, 12, 17, etc.

25 15. On May 9, 1994, I visited EDS and LAN Solutions to show them Fox Key-View®
26 product. By June 10, 1994, the Key-View® products were set up and operational at EDS and LAN
27 Solutions facilities in, respectively, Plano, Texas and Vienna, Virginia.

28 16. In July of 1994, Fox published the Key-View® User Manual Rev. 3.3, attached as
Appendix C and provided copies of this manual to LAN Solutions and EDS. On September 9, 1994,

1 Fox registered the User Manual Rev. 3.3 in the U.S. Copyright Office, which acknowledged the
2 publication date of July 2, 1994, as shown in Appendix D.

3 17. After viewing the Key-View® product, LAN Solutions requested a geographically
4 exclusive license to use Key-View® and bought approximately 25 units. By the end of 1994, EDS had
5 ordered 21 Key-View® units.

6 18. The Key-View® product identified in the User Manual Rev. 3.3 had been beta tested,
7 evaluated, offered for sale, sold, shipped and paid for by November 1994.

8 19. The Key-View® product as it existed in early 1994 and as it was offered and sold to
9 EDS and LAN Solutions included an on-screen menu for selecting which of several remote PC
10 computers were to be controlled by the remote computer (i.e., the workstation computer). To retrieve
11 the pop-up overlaid on-screen display menu, the remote user tapped a left shift key three times and the
12 menu screen would automatically pop-up on the computer monitor. This on-screen display menu was
13 overlaid onto the video being returned by the host PC. When only a single host PC was used with the
14 Key-View® product, the on-screen menu at the remote computer would display an option to connect to
15 that single host PC. But, when multiple host PCs were connected via a daisy chain connection to
16 multiple Key-View® products, the remote PC would display via the on-screen pop-up menu all of the
17 various host PCs in the daisy chain that could be reached by the remote computer. In particular, the
18 pop-up overlaid on-screen menu at the remote computer provided a list of names and computer
19 numbers of the various daisy chained host PCs and the user selected one of the PCs from the menu to
20 connect to by utilizing the workstation keyboard/mouse.

21 20. In December 1994 or January 1995, Fox shipped Key-View® products to Bell Atlantic.
22 These products also were shipped with copies of the User Manual Rev. 3.3.

23 21. In late 1994 or early 1995, Fox showed the Key-View® product to AT&T, Bell Labs and
24 Compaq.

25 22. In October 1994, Fox began publishing print advertising for the Key-View® Rev. 3.3
26 product.
27
28

1 23. In late 1994 and early 1995, five magazines accepted a Key-View® product for
2 evaluation and subsequently published articles regarding the Key-View® Rev. 3.3 product. Three of
3 these magazine articles are attached as Appendix E.

4 24. By early 1995, I was approached by Remigius Shatas of Cybex Computer Products
5 Corp. (Cybex), who suggested that the Key-View® product might be a good compliment to Cybex's
6 product line. In February 1995, Mr. Shatas and I wrote out a joint development plan between Cybex
7 and Fox. The attorneys for Cybex subsequently drafted a joint development agreement which was
8 signed between Cybex and Fox in October 1995.

9 25. In 1995, the Fox Key-View® product was available for purchase through Cybex's
10 catalogs.

11 26. At least as early as December 1995, Cybex and Fox were cooperating at trade shows to
12 show Cybex's products together with Fox's Key-View® product.

13 27. A detailed description of how the Key-View® product provided an on-screen display
14 menu and an ability to switch between one host PC or multiple daisy chained host PCs via the
15 on-screen display menu is described in the Key-View® User Reference Manual Rev. 3.3 (Appendix C)
16 and particularly at least pages 55-60 (with respect to the on-screen display). An example of the on-
17 screen menu in a Key-View® product is shown in Figure 16 on page 57 of the Key-View® User
18 Reference Manual Rev. 3.3. In the daisy chain mode, an additional on-screen display menu allows the
19 user to select one of multiple remote PC's and is shown in Figure 18 on page 60 of the Key-View® User
20 Reference Manual Rev. 3.3.

21 28. The on-screen display pop-up menu for the Key-View® is generated in the circuitry at
22 the remote PC.

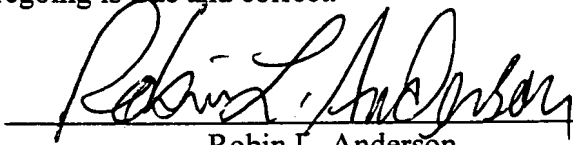
23 29. Appendix F is an updated version of the Key-View® User Reference Manual (Rev. 4.0)
24 that was published November 9, 1995.

25 30. Appendix G is a fair and accurate rendition of Figure 1 of the '212 patent as modified to
26 include the crosspoint telephone switch implicitly in the original Figure 1 (and explicitly disclosed as
27 the "standard telephone line linkage" at, for example, Col. 5, lines 28-30).
28

1 31. In December 1998, I discovered that the official corporate name of Fox is Fox Network
2 Systems Corp. In this declaration, I have used the names "Fox Network Systems, Inc." and "Fox
3 Network Systems Corp." synonymously.
4

5 I declare under penalty of perjury that the foregoing is true and correct.
6

7 DATED: January 14, 1999
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Robin L. Anderson

Declaration of Robin L. Anderson

7

Williams, Kastner & Gibbs PLLC
Two Union Square, Suite 4100
Mail Address: P.O. Box 21926
Seattle, Washington 98111-3926
(206) 628-6600

301805

Attachment 6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

HAND CARRY: GROUP 2757

BEASLEY, et al.

Atty. Ref.:

Serial No. 08/969,723

Group: 2757

Filed: November 12, 1997

Examiner: Dinh, D.

For: Interconnection System for Viewing and Controlling
Remotely Connected Computers with On-Screen Video
Overlay for Controlling of the Interconnection Switch

* * * * *

February 3, 1999

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

PETITION TO WAIVE THE RULES

Your Petitioner, Cybex Computer Products Corp., requests a waiver of one aspect of 37 CFR 1.291 so the above-referenced Examiner can consider the attached Protest, even though it is being filed after the Notice of Allowance has been sent in the above-referenced application (hereafter the "Beasley Application"). The factual bases for this Petition are set out in the attached Protest (which is incorporated herein by reference) and are summarized below.

The first sentence of 37 CFR 1.291(a) provides the Petitioner with the requisite standing to submit a protest in the referenced application and to have the

Protest “referred to the examiner having charge of the subject matter involved,” in this case Examiner Dinh and the appropriate Group Director. Although the second sentence of 37 CFR 1.291(a) suggests that Protests should be filed before mailing of the Notice of Allowance in the underlying application, this is only in order to guarantee that the Protest “will be entered in the application file” and does not effect the standing of the Protester to have the protest referred to the Examiner under the provisions of 37 CFR 1.291(a) (first sentence).

The attached Protest could not have been filed before the Notice of Allowance was mailed (as suggested by the second sentence of 37 CFR 1.291(a)) since the Protester did not have any non-confidential knowledge of that pending Beasley Application until *after* the Notice of Allowance was sent. Moreover, “a protest submitted after the mailing of the notice of allowance will not knowingly be ignored if the protest included prior art documents which clearly anticipate or clearly render obvious one or more claims.” MPEP 1901.04; *see* attached Protest. Accordingly, the Patent Office should give full consideration to this Protest.

The present case is akin to *Harley v. Lehman*, 981 F.Supp. 9 (D.D.C. 1997) (courtesy copy is enclosed), in which a plaintiff sent a “threat” letter to a competitor and the competitor responded by filing a protest against the threatener's patent application. The Protest was filed on May 5, 1992 (three months after a

February 4, 1992 Notice of Allowance was mailed) and included two references
“for similar claims.” The Patent Office responded as follows:

“On July 23, 1992, five days before the 975 patent was to issue, the director of the responsible patent examining group sent a memorandum to the PTO's Office of Publications requesting that Harley's patent be withdrawn from issue because new art had been submitted in a protest. The next day, July 24, plaintiff's patent was withdrawn from issue.”

Id. at 10.

The *Harley* case is strikingly similar to the present case in that the Protester is filing a Protest after Notice of Allowance but before issuance, citing references for similar claims. The present Protester requests that the Patent Office exercise the same kind of discretion in the present case as was exercised in *Harley*--namely for the Group Director to request withdrawal of the Beasley Application from issue so the '212 patent can be fully and fairly considered.

The present petition is filed because the Examiner and Group Director should be allowed to fully consider the applicability of prior art U.S. Patent No. 5,732,212 (hereafter “the ‘212 patent”) to the claims of the pending Beasley Application. The ‘212 patent clearly anticipates the parent Beasley patent application (which became U.S. Patent No. 5,721,842) and provides a compelling basis for re-opening prosecution in the pending Beasley Application so the ‘212 patent prior art can be fully considered there.

Apex PC Solutions, Inc. ("Apex"), the owner of the Beasley '842 patent, has already sued your Petitioner on Beasley, U.S. Patent 5,721,842. Further, Apex, has made clear that it will also assert the Beasley Application against Cybex once it issues as a patent, even though Apex knows that the procedures necessary to provoke an interference between the '212 patent and the Beasley application have already been filed in the U.S. Patent Office. *See*, enclosed Protest at Attachment 10 (Proposed Stipulation at ¶5), and Petitioner's Request for Interference at Attachment 8.

In the interest of justice, the Beasley Application should not issue over a reference that may anticipate its claims. Nor should that application issue when the claimed subject matter may not even be owned by Apex. The Beasley Application should be stayed from grant so it can be examined substantively based on the '212 patent and the interference proceeding can resolve proper inventorship.

If the Beasley application is granted, Petitioner will be forced to expend substantial litigation fees to defend against a patent that (1) is likely invalid, (2) may not survive the upcoming Interference, or (3) may be owned by Petitioner rather than Apex at the conclusion of the Interference. The withdrawal of the Beasley Application from issue would allow the Examiner to substantially address

at least item (1) and would allow the Patent Office time to exercise its discretion to provoke an Interference without sending a patent out into the public with a presumption of validity that mischaracterizes its true condition. See, *Harley*, 981 F.Supp. at 11:

“It would be contrary to sound public policy for the PTO to issue a patent in the face of citations of prior art, especially because once a patent has issued, the presumption of validity attaches.”

It is important to note that, despite litigation discovery, Apex withheld the information needed by Petitioner to file this Protest earlier. Specifically, although Apex provided Petitioner’s trial counsel with knowledge of the existence of the Beasley Application, it did so *only* under strict confidentiality rules imposed by the Trial Court’s Protective Order. It was not until *after* the Notice of Allowance was mailed that Apex provided Petitioner with a non-confidential copy of the Beasley Application that Petitioner could legally use to file this Protest. Had Apex provided an earlier, non-confidential warning, this Protest may well have resulted sooner.

Because the ‘212 prior art reference is material to the subject matter of the ‘842 patent and its progeny, and is being used to provoke an interference with the

BEASLEY et al.
Serial No.: 08/969,723

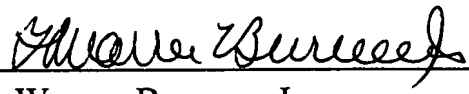
'842 patent and the Beasley Application, the Petitioner respectfully requests that the Rules be waived to fully consider the attached Protest.

A copy of this filing is being served on Apex's counsel of record, by first class mail:

Rodney Tullett
Christensen, O'Connor, Johnson & Kindness, PLLC
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101-2347

A check to cover the petition fee is attached. Should the check not be found, or the amount thereof be incorrect, or should any other fees be or become necessary in connection with this Petition and the attached Protest, the Commissioner is authorized to charge the undersigned's Deposit Account No. 14-1140.

Respectfully submitted,
NIXON & VANDERHYE P.C.

By: 
H. Warren Burnam, Jr.
Reg. No. 29,366

HWB:sks
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

Attachment 7

APPENDIX A

'842 PATENT ANALYSIS

'842 Patent Claim	Prior Art
<p>1. A system for connecting a workstation of the type that includes a keyboard, a cursor control device and a video monitor to one or more remotely located computers, comprising:</p>	<p><i>Modem-Connect Keyview Embodiment (Col. 5, lines 24-30):</i> The Keyveiw is a system for connecting a workstation including a keyboard 4 (Col. 17, line 1+), a cursor control device 4A (Col. 17, line 66+), and a video monitor 3 (Col. 16, line 53+) to one or more remotely located computers (10, 16, 20, etc.). The signals from the keyboard, cursor control device and monitor are connected through the telephone switch and telephone lines between modem 5 and modem 7. The computers are remotely located in that they are as far away as two telephones can be (i.e., as far away as around the world).</p> <p><i>In the Alternative:</i></p> <p><i>Direct-Connect Keyview Embodiment (Col. 4, lines 31-40):</i> The Keyveiw is a system for connecting a workstation including a keyboard 4, a cursor control device 4A, and a video monitor 3 to one or more remotely located computer (10, 16, 20, etc.), as described above. The signals from the keyboard, cursor control device and monitor are connected through a direct line linkage between the Remote Site 1 and Host System 6. Assuming that the court adopts Apex's definition of the word "remote" in which the computer is remote if it is not "directly connected to the workstation and can be in a separate location," the direct link Keyview embodiment includes a "remotely located" computer. (e.g., Col. 11, lines 29-30).</p>
<p>a central programmable switch for connecting signals received on a number of inputs to a number of outputs;</p>	<p><i>Modem-Connect Keyview Embodiment:</i> In the Modem-connect mode, the Keyview includes a telephone switch for connecting any number of remote sites 1 (at corresponding telephone numbers) to any number of host sites 00 (at other corresponding telephone numbrers, as described, for example, at Col. 49, line 62 - Col. 50, line 2). The telephone switch is located between modem 5 and modem 7 (Figure 1) and is the most classic form of the crosspoint switch required by the '842 patent claims in that it simply organizes a path for signals to travel from the selected telephone number input to the selected telephone number output. Once this path is organized, the telephone switch merely passes (or "connects") the exact signals received at the selected telephone number input to the selected telephone number output. The telephone switch is programmable according to Apex's definition in that "its routing of inputs to outputs is controlled by electronic signals" (e.g., Col. 6, lines 32-34).</p> <p><i>In the Alternative:</i></p> <p><i>Direct-Connect Keyview Embodiment:</i> Assuming that the Court adopts Apex's definition of the word "switch," virtually any electrical component can be a switch. In the Direct-connect mode, the Keyview itself is a switch, when used alone or in combination with other daisy-chained Keyviews. The Keyview switch 8 is a switch between the workstation 3/4/4A and the remote computer 10 according to Apex's definition of "switch" since it is a general purpose processor 106/114 with inputs (for example, 103 in Figure 4A) and outputs (for example, 116 in Figure 4A) for keyboard, mouse, and video signals. The Keyview switch 8 passes (or "connects") the keyboard/mouse signals received from the workstation 3/4/4A (via the first signal conditioning circuit 2, discussed below) to the remote computer 10 (e.g., Col. 33, lines 24-41; Col. 48, lines 1-33). The Keyview switch 8 is programmable according to Apex's definition in that "its routing of inputs to outputs is controlled by electronic signals." (e.g., Col. 20, lines 12-38; Col. 31, lines 31-40). The Keyview is also a more classic switch (capable of selecting more than one remote computer for the received keyboard/mouse signals) when it is used in the daisy-chain arrangement shown in Figure 1. The combination of several daisy-chained Keyveiws (8, 13, 18, etc.) create a switch with an input from the workstation 3/4/4A and several outputs to corresponding remote computers (10, 16, 20, etc.). The daisy-chained Keyveiws receive keyboard/mouse signals from the workstation 3/4/4A and select one of the outputs for delivery of the signals, thus ensuring that the selected remote computer receives the signals. (e.g., Col. 12, lines 1-16 ["Presently, a Remote PC may only access one Host Unit at a time, but may switch been [sic: between] Host Units during a single active communications session"]; Col. 13, line 59 - Col. 14, line 15; Col. 50, lines 3-14).</p>

'842 Patent Claim	Prior Art
	Still further, the Keyview Patent suggests that it can be used in combination with KVM switches such as the Commander by Cybex, etc. (Col. 3, lines 46-55).
<p>A first signal conditioning circuit for receiving signals produced by the keyboard and cursor control device of the workstation and for transmitting the keyboard and cursor control device signals to an input of the central switch, the first signal conditioning circuit also including. . .</p>	<p><i>Modem-Connect Keyview Embodiment:</i> In the Modem-connect mode, the Remote PC 2 (possibly also including Modem 5) are the first signal conditioning circuit. The Remote PC 2 is a separate and independently housed circuit connected near the workstation 3/4/4A. It receives signals produced by the keyboard 4, cursor control device 4A, and a video monitor 3 and transmits those signals to an telephone line input of the telephone switch. The Remote PC 2 and Modem 5 are located remote from the telephone switch (e.g., Figures 1 and 5C).</p> <p><i>In the Alternative:</i></p> <p><i>Direct-Connect Keyview Embodiment:</i> In the Direct-connect mode, the Remote PC 2 and Remote Data Circuitry 103 are the first signal conditioning circuit, according to Apex's definition of "signal conditioning circuit" since they "match the signal requirements of an input to the signal requirements of an output." The Remote PC 2 receives signals produced by the keyboard 4, cursor control device 4A, and a video monitor 3 and transmits those signals to an input of the CPU switch 106/114 or to a selected daisy-chained CPU switch 106/114 via the Remote Data Circuitry 103 (e.g., Figures 1, 4A, and 5C).</p>
<p>. . . an on-screen programming circuit that produces overlaid video signals on the video monitor of the workstation,. . .</p>	<p><i>Modem-Connect and Direct-Connect Keyview Embodiments:</i></p> <p>The Remote PC 2 includes a general purpose processor, memory, etc. running installed on-screen programming routines (Col. 6, line 26 - Col. 7, line 16; Col. 44, lines 12-15, 22-29; Col. 45, line 64 - Col. 46, line 12; Col. 47, lines 44-53; and Col. 50, lines 3-14). This on-screen programming circuit at the Remote PC 2 produces internally generated pop-up menus overlaid onto the video signal captured from the Host PC (10, 16, 20), as described by example at Col. 50, lines 3-13 and as shown by example in the Keyview User Guide at pages 55-60 and Figure 18.</p>
<p>. . . means for detecting keyboard and cursor control device signals entered in response to the overlaid video signals, and . . .</p>	<p><i>Modem-Connect and Direct-Connect Keyview Embodiments:</i></p> <p>The Remote PC 2 detects keyboard and cursor control device signals entered in response to the overlaid video menus (e.g., Col. 45, line 64 - Col. 46, line 12; and Col. 50, lines 9-13).</p>
<p>. . . means for transmitting the keyboard and cursor signals entered in response to the overlaid video signals to the central switch in order to control the operation of the central switch; and</p>	<p><i>Modem-Connect Keyview Embodiment:</i> Once the Remote PC 2 detects the user's request to switch remote computers (for example, Col. 50, lines 9-13), the Remote PC 2 sends keyboard information entered in response to an overlaid video menu including a dialing string which will control the operation of the telephone switch (e.g., Col. 45, line 64 - Col. 46, line 12; Col. 6, lines 25-34; and Col. 11, lines 34-37).</p> <p><i>In the Alternative:</i></p> <p><i>Direct-Connect Keyview Embodiment:</i> Once the Remote PC 2 detects the user's request to switch remote computer connections, the Remote PC packets its transmissions with address information to the daisy-chained Keyviews (8, 13, 18). These address signals satisfy the claim limitation under Apex's definition of switch control since the Keyview address information controls the switching of keyboard/mouse data to a selected one of the daisy-chained Keyviews (e.g., Col. 7, lines 2-4; and Col. 13, lines 30-45).</p>
<p>a second signal conditioning circuit coupled to the remotely located computers for receiving the keyboard and cursor control device signals from an output of the central switch and for supplying the keyboard and cursor control signals to the remote computer.</p>	<p><i>Modem-Connect Keyview Embodiment:</i> In the Modem-connect mode, the second signal conditioning circuit is the Keyview 8 (possibly also including the Modem 7). The Keyview 8 is an independently housed circuit connected near the remote computer 10. The Keyview 8 receives the keyboard and cursor control device signals from the Remote PC 2 via the telephone line output. It then supplies those signals to the remote computer (Host PC 10) such that the keyboard/mouse 3/4 operate just as though they were directly connected to the remote PC 10. (Col. 48, lines 4-11).</p> <p><i>In the Alternative:</i></p>

'842 Patent Claim	Prior Art
	<p><i>Direct-Connect Keyview Embodiment:</i> In the Direct-connect mode, the Host Data Circuitry 116, I/O Circuit 124/125, and Video Signal Input Circuitry (Figures 4A and 4B) qualify as the second signal conditioning circuit under Apex's definition of such. These circuits acts to "match the signal requirements of an input to the signal requirements of an output," namely the signal requirements of the Keyview CPUs 636A and 636B (also 106/114) to the signal requirements of the keyboard, mouse, and monitor ports of the remote computer (Host PC 1). (e.g., Col. 19, lines 42-53; Figure 1, 4A and 5C). The I/O circuits 124/125, for example receive keyboard signals from an output 126 of the Keyview CPU 106 and supply those signals to the remote computer (Host PC 10) on line 120 such that the keyboard 3 operates just as though it were directly connected to the remote computer 10. (Col. 48, lines 4-11).</p>
2. The system of claim 1, wherein. .	See corresponding limitations above.
<p>... the second signal conditioning circuit receives video signals produced by the remote computer system and transmits the video signals to the central switch which routes the video signals to the first signal conditioning unit, wherein. . .</p>	<p><i>Modem-Connect Keyview Embodiment:</i> In the Modem-connect mode, video signals are sent from the Host PC through line 639 to the Keyview 8 (second signal conditioning circuit), which transmits them to the telephone switch (e.g., Figure 5C; and Cols. 22-30). The telephone switch then routes the video signals to the PC 2 (first signal conditioning circuit). (Figure 5C; Col. 6, lines 58-66).</p> <p><i>In the Alternative:</i></p> <p><i>Direct-Connect Keyview Embodiment:</i> In the Direct-connect mode, video signals are sent from the Host PC through line 639 to the Video Signal Input Circuitry 110 (second signal conditioning circuit), which transmits them to the Video CPU Switch 636B (e.g., Figure 5C; and Cols. 22-30). The Video CPU Switch 636B then routes the video signals to the PC 2 (first signal conditioning circuit) via line 632. (Figure 5C; Col. 6, lines 58-66).</p>
<p>... the first signal conditioning unit receives the video signals from the central switch and applies the video signals to the video monitor of the workstation.</p>	<p><i>Modem-Connect Keyview Embodiment:</i> In the Modem-connect mode, video signals are provided by the telephone switch and received by the PC 2 (first signal conditioning circuit). (Figure 5C). The PC 2 applies the video signals to the display 3 (Col. 6, lines 58-66).</p> <p><i>In the Alternative:</i></p> <p><i>Direct-Connect Keyview Embodiment:</i> In the Direct-connect mode, video signals are provided by the Video CPU Switch 636B of the Keyview 8 and received by the PC 2 (first signal conditioning circuit). (Figure 5C). The PC 2 applies the video signals to the display 3 (Col. 6, lines 58-66).</p>
8. A system for connecting a workstation of the type that includes a keyboard, a cursor control device and a video monitor to one or more remotely located computers, comprising:	See corresponding limitations above.
a programmable switch for routing keyboard and cursor device signals received from the workstation to a remotely located computer and for routing video signals produced by the remotely located computer to the workstation;	See corresponding limitations above.

'842 Patent Claim	Prior Art
a first signal conditioning circuit for receiving the keyboard and cursor control device signals produced at the workstation and for transmitting the keyboard and cursor control device signals to the programmable switch, the first signal conditioning circuit also including:	See corresponding limitations above.
an on-screen programming circuit that receives horizontal and vertical synchronize signals and produces overlaid video signals on the video monitor of the workstation;	<p>See corresponding limitations above.</p> <p>In addition, the Keyview Unit receives vertical and horizontal synchronize signals from the remote PC 10 (Col. 29, line 57 - Col. 30, line28; Col. 43, lines 47-56).</p> <p>That the on-screen programming circuit would receive horizontal and vertical synchronize signals is thus taught or suggested by Keyview. A detailed circuit schematic of an on-screen programming circuit that receives horizontal and vertical synchronize signals is detailed in the Multi-Scan Color CRT Display Manual, for example at pages 36 and 67.</p>
a signal generator that generates internal horizontal and vertical synchronize signals;	The Multi-Scan Color CRT Display Manual, for example at page 36 and Schematic Sheet 4, includes a signal generator IC901 that generates internal horizontal sync signals (HS) and vertical sync signals (VS).
a synchronize switch coupled to receive the internal horizontal and vertical synchronize signals produced by the signal generator and external horizontal and vertical synchronize signals received from the remotely located computer, the switch operating to select either the internal or external horizontal and vertical synchronize signals to be supplied to the on-screen programming circuit;	<p>The Multi-Scan Color CRT Display Manual, for example at page 36, includes a sync switch IC501 that selects either external horizontal sync HS and vertical sync VS signals or internally generated horizontal sync and vertical sync. The result of the selection is vertical sync VD and horizontal sync HD, which after further processing become, respectively, vertical sync V_PULSE and horizontal sync H_PULSE</p> <p>IC203 selects either the external HS/VS signals from coax BNC or external HS/VS from 15P D_SUB.</p>
means for detecting keyboard and cursor control device signals entered in response to the overlaid video signals;	See corresponding limitations above.
means for transmitting the keyboard and cursor control device signals entered in response to the overlaid signals to the programmable switch in order to control the operation of the programmable switch; and	See corresponding limitations above.
a second signal conditioning circuit coupled to the remotely located computer for receiving the keyboard and cursor control device signals transmitted from the programmable switch and for supplying the keyboard and cursor control device signals to the remotely located computer, the second signal conditioning circuit also receiving video signals produced by the remotely located computer and transmitting the video signals to the programmable switch.	See corresponding limitations above.
9. The system of claim 8, further	See corresponding limitations above.

'842 Patent Claim	Prior Art
comprising:	
a synchronize polarizer circuit that receives the internal or external horizontal and vertical synchronize signals selected by the synchronize switch and converts the selected horizontal and vertical synchronize signals to active-low logic levels.	<p>See corresponding limitations above.</p> <p>In addition, the Keyview Unit receives vertical and horizontal synchronize signals from the remote PC 10 and processes them to a given negative polarity (Col. 29, line 57 - Col. 30, line 28; Col. 43, lines 47-56; Figure 4P).</p> <p>That the on-screen programming circuit would receive horizontal and vertical synchronize signals and bring them to active low logic is thus taught or suggested by Keyview. A detailed circuit schematic of an on-screen programming circuit that receives horizontal and vertical synchronize signals and brings them to active low logic is detailed in the Multi-Scan Color CRT Display Manual, for example at page 36</p>
10. The system of claim 8, further comprising:	See corresponding limitations above.
a first and second set of buffer circuits, the first set of buffer circuits having inputs coupled to receive the video signals produced by the remotely located computer and outputs coupled to receive the overlaid video signals produced by the on-screen programming circuit, the second set of buffer circuits having inputs coupled to receive the overlaid video signals produced by the on-screen programming circuit;	The Multi-Scan Color CRT Display Manual, for example at pages 37 and 67, includes video buffers that select between RGB signals received by, respectively the on-screen programming circuit and the remotely located computer.
a control logic circuit that enables the first and second set [sic] sets of buffer circuits so that the video signals supplied to the video monitor of the workstation are either the video signals produced by the remotely located computer, the overlaid video signals produced by the on-screen programming circuit or both the video signals produced by the remotely located computer and overlaid video signals produced by the on-screen programming circuit.	The Multi-Scan Color CRT Display Manual, for example at pages 37 and 67, includes control logic circuitry, for example "OSD Control" INV Q1303 and INV Q1340 that enable/disable the sets of video buffers.
11. A system for connecting a workstation of the type that includes a keyboard, a cursor control device and a video monitor to one or more remotely located computers, comprising:	See corresponding limitations above.
a programmable switch for routing keyboard and cursor control device signals received from the workstation to a remotely located computer and for routing video signals produced by the remotely located computer to the workstation;	See corresponding limitations above.
a first signal conditioning circuit for receiving the keyboard and cursor	See corresponding limitations above.

'842 Patent Claim	Prior Art
control device signals produced at the workstation and for transmitting the keyboard and cursor control device signals to the programmable switch, the first signal conditioning circuit also including:	
an on-screen programming circuit that receives horizontal and vertical synchronize signals and that produces overlaid video signals on the video monitor of the workstation;	See corresponding limitations above.
a signal generator that generates internal horizontal and vertical synchronize signals;	See corresponding limitations above.
a synchronize switch coupled to receive the internal horizontal and vertical synchronize signals produced by the signal generator and external horizontal and vertical synchronize signals produced by a remotely located computer, the switch operating to select either the internal or external horizontal and vertical synchronize signals to be supplied to the on-screen programming circuit;	See corresponding limitations above.
a synchronize polarizer circuit that receives the internal or external horizontal or vertical synchronize signals selected by the synchronize switch and converts the selected horizontal and vertical synchronize signals to active-low logic levels;	See corresponding limitations above.
means for detecting keyboard and cursor control device signals entered in response to the overlaid video signals:	See corresponding limitations above.
means for transmitting the keyboard and cursor control device signals entered in response to the overlaid video signals to the programmable switch in order to control the operation of the programmable switch; and	See corresponding limitations above.

'842 Patent Claim	Prior Art
<p>a second signal conditioning circuit coupled to the remotely located computer for receiving the keyboard and cursor control device signals transmitted from the programmable switch and for supplying the keyboard and cursor control device signals to the remotely located computer, the second signal conditioning circuit also receiving video signals produced by the remotely located computer and transmitting the video signals to the programmable switch.</p>	<p>See corresponding limitations above.</p>
<p>12. A system for connecting a workstation of the type that includes a keyboard, a cursor control device and a video monitor to at least one remotely located computer, comprising;</p>	<p>See corresponding limitations above.</p>
<p>a programmable switch for routing signals from said keyboard and cursor control device to said remotely located computer and for routing video signals produced by the remotely located computer to the workstation;</p>	<p>See corresponding limitations above.</p>
<p>a first signal conditioning circuit for receiving the keyboard and cursor control device signals produced at the workstation and for transmitting the keyboard and cursor control device signals to the programmable switch, the first signal conditioning circuit also including...</p>	<p>See corresponding limitations above.</p>
<p>... an on-screen programming circuit that receives horizontal and vertical synchronize signals and produces overlaid video signals on the video monitor of the workstation;</p>	<p>See corresponding limitations above.</p>
<p>... a signal generator that generates internal horizontal and vertical synchronize signals;</p>	<p>See corresponding limitations above.</p>
<p>... a synchronize switch coupled to receive the internal horizontal and vertical synchronize signals produced by the signal generator and external horizontal and vertical synchronize signals produced by the remotely located computer, the switch operating to select either the internal or external horizontal and vertical synchronize signals to be supplied to the on-screen programming circuit;</p>	<p>See corresponding limitations above.</p>

'842 Patent Claim	Prior Art
... a synchronize polarizer circuit that receives the internal or external horizontal and vertical synchronize signals selected by the synchronize switch and converts the selected horizontal and vertical synchronize signals to active-low logic levels;	See corresponding limitations above.
... a first and second set of buffer circuits, the first set of buffer circuits having inputs coupled to receive the video signals produced by the remotely located computer and outputs coupled to the video monitor of the workstation, the second set of buffer circuits having inputs coupled to receive the overlaid video signals produced by the on-screen programming circuit and outputs coupled to the video monitor of the workstation;	See corresponding limitations above.
... a control logic circuit that enables the first and second set [sic] sets of buffer circuits so that the video signals supplied to the video monitor of the workstation are either the video signals produced by the remotely located computer, the overlaid video signals produced by the on-screen programming circuit or both the video signals produced by the remotely located computer and the overlaid video signals produced by the on-screen programming circuit.	See corresponding limitations above.
... means for detecting keyboard and cursor control device signals entered in response to the overlaid video signals:	See corresponding limitations above.
... means for transmitting the keyboard and cursor control device signals entered in response to the overlaid video signals to the programmable switch in order to control the operation of the programmable switch; and	See corresponding limitations above.
a second signal conditioning circuit coupled to the remotely located computer for receiving the keyboard and cursor control device signals transmitted from the programmable switch and for supplying the keyboard and cursor control device signals to the remotely located computer, the second signal	See corresponding limitations above.

'842 Patent Claim	Prior Art
conditioning circuit also receiving video signals produced by the remotely located computer and transmitting the video signals to the programmable switch.	
13. In combination: a workstation of the type that includes a keyboard, a cursor control device and a video monitor;	See corresponding limitations above.
at least one remotely located computer;	See corresponding limitations above.
a programmable switch for routing signals received from the workstation to the remotely located computer and for routing located video signals produced by the remotely located computer to the workstation:	See corresponding limitations above.
a first signal conditioning circuit for receiving the signals produced at the workstation for transmitting the signals to the programmable switch, the first signal conditioning circuit also including. . .	See corresponding limitations above.
. . .an on-screen programming circuit that receives horizontal and vertical synchronize signals and produces overlaid video signals on the video monitor of the workstation:	See corresponding limitations above.
. . .a signal generator that generates internal horizontal and vertical synchronize signals:	See corresponding limitations above.
. . .a synchronize switch coupled to receive the internal horizontal and vertical synchronize signals produced by the signal generator and external horizontal and vertical synchronize signals received from the remotely located computer, the switch operating to select either the internal or external horizontal and vertical synchronize signals to be supplied to the on-screen programming circuit:	See corresponding limitations above.
means for detecting signals from the workstation in response to the overlaid video signals:	See corresponding limitations above.

'842 Patent Claim	Prior Art
means for transmitting the signals entered in response to the overlaid signals to the programmable switch in order to control the operation of the programmable switch; and	See corresponding limitations above.
a second signal conditioning circuit coupled to the remotely located computers for receiving the signals transmitted from the programmable switch and for supplying the signals to the remotely located computer, the second signal conditioning circuit also receiving video signals produced by the remotely located computer and transmitting the video signals to the programmable switch.	See corresponding limitations above.
14. The system of claim 13, further comprising:	See corresponding limitations above.
a synchronize polarizer circuit that receives the internal or external horizontal and vertical synchronize switch and converts the selected horizontal and vertical synchronize signals to active-low logic levels;	See corresponding limitations above.
15. The system of claim 13, further comprising:	See corresponding limitations above.
a first and second set of buffer circuits, the first set of buffer circuits having inputs coupled to receive the video signals produced by the remotely located computer and outputs coupled to the video monitor of the workstation, the second set of buffer circuits having inputs coupled to receive the overlaid video signals produced by the on-screen programming circuit;	See corresponding limitations above.
a control logic circuit that enables the first and second set [sic] sets of buffer circuits so that the video signals supplied to the video monitor of the workstation are either the video signals produced by the remotely located computer, the overlaid video signals produced by the on-screen programming circuit or both the video signals produced by the remotely located computer and the overlaid video signals produced by the on-screen programming circuit;	See corresponding limitations above.
16. In combination: a workstation of the type that includes a keyboard, a cursor control device and a video monitor;	See corresponding limitations above.

'842 Patent Claim	Prior Art
at least one remotely located computer;	See corresponding limitations above.
a programmable switch for routing signals received from the workstation to the remotely located computer and for routing located video signals produced by the remotely located computer to the workstation:	See corresponding limitations above.
a first signal conditioning circuit for receiving the signals produced at the workstation and for transmitting the signals to the programmable switch, the first signal conditioning circuit also including:	See corresponding limitations above.
...an on-screen programming circuit that receives horizontal and vertical synchronize signals and produces overlaid video signals on the video monitor of the workstation,	See corresponding limitations above.
... a signal generator that generates internal horizontal and vertical synchronize signals:	See corresponding limitations above.
... a synchronize switch coupled to receive the internal horizontal and vertical synchronize signals produced by the signal generator and external horizontal and vertical synchronize signals produced by the remotely located computer, the switch operating to select either the internal or external horizontal and vertical synchronize signals to be supplied to the on-screen programming circuit:	See corresponding limitations above.
... a synchronize polarizer circuit that receives the internal or external horizontal and vertical synchronize signals selected by the synchronize switch and converts the selected horizontal and vertical synchronize signals to active-low logic levels;	See corresponding limitations above.
means for detecting signals from the workstation that are produced in response to the overlaid video signals:	See corresponding limitations above.
means for transmitting the signals produced in response to the overlaid video signals to the programmable switch in order to control the operation of the programmable switch; and	See corresponding limitations above.

'842 Patent Claim	Prior Art
a second signal conditioning circuit coupled to the remotely located computer for receiving the signals transmitted from the programmable switch and for supplying the signals to the remotely located computer, the second signal conditioning circuit also receiving video signals produced by the remotely located computer and transmitting the video signals to the programmable switch.	See corresponding limitations above.
17. In combination: a workstation of the type that includes a keyboard, a cursor control device and a video monitor;	See corresponding limitations above.
at least one remotely located computer;	See corresponding limitations above.
a programmable switch for routing signals received from the workstation to the remotely located computer and for routing located video signals produced by the remotely located computer to the workstation:	See corresponding limitations above.
a first signal conditioning circuit for receiving the signals produced at the workstation and for transmitting the signals to the programmable switch, the first signal conditioning circuit also including:	See corresponding limitations above.
an on-screen programming circuit that receives horizontal and vertical synchronize signals and produces overlaid video signals on the video monitor of the workstation:	See corresponding limitations above.
a signal generator that generates internal horizontal and vertical synchronize signals:	See corresponding limitations above.
a synchronize switch coupled to receive the internal horizontal and vertical synchronize signals produced by the signal generator and external horizontal and vertical synchronize signal produced by the remotely located computer, the switch operating to select either the internal or external horizontal and vertical synchronize signals to be supplied to the on-screen programming circuit:	See corresponding limitations above.

'842 Patent Claim	Prior Art
a synchronize polarizer, circuit that receives the internal or external horizontal and vertical synchronize signals selected by the synchronize switch and converts the selected horizontal and vertical synchronize signals to active-low logic levels;	See corresponding limitations above.
a first and second set of buffer circuits, the first set of buffer circuits having inputs coupled to receive the video signals produced by the remotely located computer and outputs coupled to the video monitor of the workstation, the second set of buffer circuits having inputs coupled to receive the overlaid video signals produced by the on-screen programming circuit and outputs coupled to the video monitor of the workstation;	See corresponding limitations above.
a control logic circuit that enables the first and second set [sic] sets of buffer circuits so that the video signals supplied to the video monitor of the workstation are either the video signals produced by the remotely located computer, the overlaid video signals produced by the on-screen programming circuit or both the video signals produced by the remotely located computer and the overlaid video signals produced by the on-screen programming circuit;	See corresponding limitations above.
means for detecting signals produced at the workstation in response to the overlaid video signals:	See corresponding limitations above.
means for transmitting the signals produced in response to the overlaid video signals to the programmable switch in order to control the operation of the programmable switch; and	See corresponding limitations above.
a second signal conditioning circuit coupled to the remotely located computer for receiving the signals transmitted from the programmable switch and for supplying the signals to the remotely located computer, the second signal conditioning circuit also receiving video signals produced by the remotely located computer and transmitting the video signals to the programmable switch.	See corresponding limitations above.

Attachment 8

PATENT

Attorney Dkt: 2540-6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.: 5,732,212)	
)	
Issue Date: March 24, 1998)	
)	
In re Reissue Application of:)	
)	
Perholtz, Ronald J. et al.)	Group Art Unit: 2308
)	
Serial No.: 08/180,824)	Examiner: Mehmet Geckil
)	
Filed: January 13, 1994)	
)	
For: SYSTEM AND METHOD FOR REMOTE MONITORING AND OPERATION OF PERSONAL COMPUTERS		

**REQUEST FOR INTERFERENCE
IN ACCORDANCE WITH 37 CFR §1.607**

Honorable Assistant Commissioner for Patents
BOX PATENT APPLICATION
Washington, DC 20231

Sir:

In accordance with the provisions of 37 CFR §1.607, the assignee of the captioned reissue application requests that an Interference be declared with United States Patent 5,721,842 to Beasley et al., issued February 24, 1998. In addition, it is requested that the Examiner also consider and include in the Interference any corresponding claims in any continuing applications of United States Patent 5,721,842 to Beasley et al., including US patent application Serial No. 08/969,723 which was allowed on November 12, 1998. A copy of the Notice of Allowance of US patent application Serial No.08/969,723 (forward

to Assignee's counsel under cover of non-confidential letter) is attached hereto.

Under the provisions of 37 CFR 1.607, in this reissue application applicants have substantially copied claims 1 - 2 from United States Patent 5,721,842 as reissue patent application claims 23 - 24, respectively.

In accordance with 37 CFR 1.607, Applicants supply the following information:

(1) In accordance with 37 CFR 1.607(a)(1), the patent from which claims have been copied is United States Patent 5,721,842 to Beasley et al., issued February 24, 1998 on US patent application SN 519,193, filed August 25, 1995. Applicants' new claims 23 - 24 have been copied from claims 1 - 2, respectively, of United States Patent 5,721,842 to Beasley et al.

(2) In accordance with 37 CFR 1.607(a)(2), Proposed Count 1 is set forth in section "A" hereof this Request. Proposed Count 1 is essentially a variation of claim 1 of the Beasley '842 patent, the primary variations (primarily taken from Beasley claim 8) being as follows:

- The switch of Proposed Count 1 is not required to be central, similar to Beasley claim 8.
- The preamble of Proposed Count 1 refers to one or more remotely located computers (similar to Beasley claim 8), rather than "a number of remotely located computers".
- Proposed Count 1 defines the term "workstation input signals" to refer to at least one of the keyboard and cursor device signals produced at the workstation, and thus requires involvement of either one (but not necessarily both) of keyboard and cursor

device signals.

- The first paragraph limitation of Proposed Count 1 refers to employment of the programmable switch “for routing signals produced by the keyboard and cursor control device of the workstation to a remotely located computer”, in similar manner to applicants’ new claim 29 (Beasley claim 8).

- Proposed Count 1 refers to a first and second “conditioner” rather than first and second conditioning circuit.

- Proposed Count 1 refers to a on-screen programming “processor” rather than to an on-screen “programming circuit”.

- Proposed Count 1 does not, in the last paragraph, explicitly state that the second signal conditioner is coupled to the remotely located computers, its location being ascertainable in that it receives keyboard and cursor control device signals from an output of the switch and supplies the same to the remotely located computer.

(3) In accordance with 37 CFR 1.607(a)(3), the correspondence of claims of United States Patent 5,721,842 to Beasley et al. to the Proposed Count is set forth as follows: At least claims 1 - 3 and 8 - 17 of United States Patent 5,721,842 to Beasley et al. correspond to Proposed Count 1. Regarding the correspondence of claims 3 and 8 - 17 to Proposed Count 1, the Examiner is encouraged to see the simultaneously filed Information Disclosure Statement.

(4) In accordance with 37 CFR 1.607(a)(4), in the captioned reissue application applicants have added new claims 22 - 28 which correspond to Proposed Count 1. Applicants’ new reissue claim 22 exactly corresponds to Proposed Count 1. The correspondence of each of reissue claims 23 - 24 to Proposed Count 1 is explained in Section C.

(5) In accordance with 37 CFR 1.607(a)(5), applicants have applied the terms of reissue application claims 22 - 24 to the disclosure of the reissue application in section B hereof.

(6) In accordance with 37 CFR 1.607(a)(6), Applicants have filed the captioned reissue application within one year of issuance of United States Patent 5,721,842 to Beasley et al.

The captioned application is for reissue of US Patent 5,732,212, which in turn was based on US Patent Application Serial No. 08/180,824, filed January 13, 1994. Thus, the '824 application has an effective filing date more than one year prior to the August 25, 1995 filing date of the application which matured as United States Patent 5,721,842 to Beasley et al. Consequentially, no statement or evidence under 37 CFR §1.608 is required.

A. PROPOSED COUNT

In accordance with 37 CFR 1.607(a)(2), Applicants submit the following Proposed Count 1:

PROPOSED COUNT 1

A system for connecting a workstation of the type that includes a keyboard, a cursor control device, and a video monitor to one or more remotely located computers, comprising:

a programmable switch for routing workstation input signals produced by at least one of the keyboard and cursor control device of the workstation to a remotely located computer;

a first signal conditioner for receiving the workstation input signals and for transmitting the workstation input signals to an input of the switch, the first signal conditioner also including an on-screen programming processor that produces overlaid video signals on the video monitor of the workstation, means for detecting workstation input signals entered in response to the overlaid video signals, and means for transmitting the workstation input signals entered in response to the overlaid video signals to the switch in order to control the operation of the switch; and

a second signal conditioner which receives the workstation input signals from an output of the switch and supplies the workstation input signals to the remotely located computer.

B. APPLICATION OF REISSUE CLAIMS TO REISSUE DISCLOSURE

In accordance with 37 CFR 1.607(a)(5), in the charts appearing in Sections B1 and B2 below Applicants are alternate applications of the terms of the new reissue application claims 22 - 24 to the disclosure of the captioned application.

B1. FIRST ALTERNATE APPLICATION OF REISSUE CLAIMS

CLAIM 22	Reissue Application Disclosure
22. A system for connecting a workstation of the type that includes a keyboard, a cursor control device, and a video monitor to one or more remotely located computers, comprising:	The workstation comprises the PC located at remote site 1, which is equipped with keyboard 4, mouse 4A, monitor 3 (see, e.g., Fig. 1 and col. 11, lines 25 - 33). The remotely located computers comprise PCs 10, 16, 20 (see, e.g., Fig. 1). The system for connecting includes remote PC processor 2, modems or direct lines, and the host systems 6, 12, and 17 (see, e.g., Fig. 1).
a programmable switch for routing workstation input signals produced by at least one of the keyboard and cursor control device of the workstation to a remotely located computer;	The programmable switch comprises the daisy chained connection of host units 8, 13, and 18 etc. (See, e.g., col. 11, lines 43 - 50; col. 12, lines 1 - 15; col. 13, lines 30 - 35, lines 59 - 64; col. 20, lines 12 - 48, Fig. 4C). Each host unit receives signals from a number of inputs [e.g., in host system 00 from a mouse 11A and keyboard 11 (see col. 12, lines 33 - col. 13, line 4)] and connects those signals to a number of outputs [e.g., in host system 00, either to host PC processor 10 or to remote site 1].

	<p>The switch is programmable in several senses. For example, the Host Unit has DIP switches that are set, e.g., to indicate the Host Unit's ID number used for addressing the Host Unit (see, e.g., col. 17, line 8+). In addition, Control CPU 106 which is programmed to execute a source program code (see, e.g., col. 30, line 29+).</p>
<p>a first signal conditioner for receiving the workstation input signals and for transmitting the workstation input signals to an input of the switch,</p>	<p>The first signal conditioner comprises remote PC processor 2¹ which receives signals produced by keyboard 4 and mouse 4A, and in the host unit comprises at least Remote Data Circuitry 103, keyboard circuit 101, and mouse circuitry 117 (see Fig. 4A). A TVLINK.EXE program executes at Remote PC Processor 2 (col. 32, line 61+). The remote keyboard and mouse activity are handled by TVLINK.EXE interrupt processes. The TVLINK.EXE process combines and transmits this data to the host unit (col. 33, line 24+). Remote Data Circuitry 103 allows Host Unit access to occur (see, e.g., col. 20, line 32+). The PC's keyboard signals are routed to the keyboard circuit 101 of the Host unit, particularly via elements 123, 124, and 125 shown in Fig. 4B (see, e.g., col. 19, lines 42+). The PC's mouse signals are applied to mouse circuitry 117 of the Host unit (see, e.g., col. 19, line 63+; col. 14, lines 5 - 15).</p>
<p>the first signal conditioner also including an on-screen programming processor that produces overlaid video signals on the</p>	<p>The first signal conditioner (e.g., remote PC</p>

¹ A processor is commonly considered a circuit element, and so considered by Perholtz (see col. 5, lines 42 - 43). Moreover, Perholtz processing can be distributed between software and discrete circuitry in accordance with, e.g., performance criteria (see, e.g., col. 22, line 24+).

video monitor of the workstation,

means for detecting workstation input signals entered in response to the overlaid video signals, and means for transmitting the workstation input signals entered in response to the overlaid video signals to the switch in order to control the operation of the switch; and

processor 2) generates overlaid video signals on video monitor 3 of Remote Site 1. In this regard, when the user presses the left shift key three times within two seconds, the user at Remote Site 1 is returned to a System Main Menu [see, e.g., symbol 741 in Fig. 7E connecting to symbol AC] which (like other menus) pop-ups (i.e., overlays) over a portion of the Host PC's screen (see, e.g., col. 48, line 47+). Any host information displayed continues to be updated and visible behind the pop-up menu on the Remote PC's screen (see, e.g., col. 48, line 51+).

In response to the overlaid menus, the user by keyboard and mouse input can, e.g., reach a screen to select another host connected to the daisy chain switch and control the switch to connect the user to the selected another host. In this regard, symbol AC (following symbol 741 in Fig. 7E) connects to symbol AC in Fig. 7C to reach Connection Options Main Menu, one option of which (see connector symbol AD connecting Fig. 7C and 7D) is Switch To New Unit screen 731 (see Fig. 7D). The Switch To New Unit 731 connection menu option is selected to switch from one Host Unit on a daisy chain to another Host Unit on the same daisy chain (see, e.g., col. 49, line 59+). When the Switch To New Unit 731 option is selected, a call list containing all Host Units is displayed 732 [see Fig. 7D]. The UP or Down arrow keys can be used to scroll through the list of Host Units, and once the desired Host Unit has been highlighted, the Enter key can be pressed to switch to the new Host Unit (see, e.g., col.

	50, lines 3 - 13). The TVLINK.EXE program accesses a given Host Unit by sending a four byte packet. The Host Unit on the chain with a matching identification number will respond by unchaining and directly connecting to the data line (see, e.g., col. 53, line 1+). Thus, keyboard and mouse signals thus entered in response to the overlaid video signals allow a Remote PC to control the daisy chain switch and to switch between, and remotely control, multiple Host PCs (see, e.g., col. 7, line 44+).
a second signal conditioner which receives the workstation input signals from an output of the switch and supplies the workstation input signals to the remotely located computer.	The second signal conditioner comprises Host Data Circuitry 116 (see Fig. 4A), which includes the Host Unit's data serial port and which passes both keyboard and mouse signals routed through the Host Unit to the Host PC Processor (see, e.g., col. 19, line 63+; col. 32, line 29).
CLAIM 23	Reissue Application Disclosure
23. A system for connecting a workstation of the type that includes a keyboard, a cursor control device, and a video monitor to a number of remotely located computers, comprising:	The workstation comprises the PC located at remote site 1, which is equipped with keyboard 4, mouse 4A, monitor 3 (see, e.g., Fig. 1 and col. 11, lines 25 - 33). The remotely located computers comprise PCs 10, 16, 20 (see, e.g., Fig. 1). The system for connecting includes remote PC processor 2, modems or direct lines, and the host systems 6, 12, and 17 (see, e.g., Fig. 1).
a central programmable switch for connecting signals received on a number of inputs to a number of outputs;	The central programmable switch comprises the daisy chained connection of host units 8, 13, and 18 etc. (See, e.g., col.

	<p>11, lines 43 - 50; col. 12, lines 1 - 15; col. 13, lines 30 - 35, lines 59 - 64; col. 20, lines 12 - 48, Fig. 4C). Each host unit receives signals from a number of inputs [e.g., in host system 00 from a mouse 11A and keyboard 11 (see col. 12, lines 33 - col. 13, line 4)] and connects those signals to a number of outputs [e.g., in host system 00, either to host PC processor 10 or to remote site 1].</p> <p>The switch is programmable in several senses. For example, the Host Unit has DIP switches that are set, e.g., to indicate the Host Unit's ID number used for addressing the Host Unit (see, e.g., col. 17, line 8+). In addition, Control CPU 106 which is programmed to execute a source program code (see, e.g., col. 30, line 29+).</p> <p>The switch is central in that it is located between Remote Site 1 and the Host PC Processor 10.</p>
<p>a first signal conditioning circuit for receiving signals produced by the keyboard and cursor control device of the workstation and for transmitting the keyboard and cursor control device signals to an input of the central switch,</p>	<p>The first signal conditioning circuit comprises remote PC processor 2² which receives signals produced by keyboard 4 and mouse 4A, and in the host unit comprises at least Remote Data Circuitry 103, keyboard circuit 101, and mouse circuitry 117 (see Fig. 4A). A TVLILNK.EXE program executes at Remote PC Processor 2 (col. 32, line 61+). The remote keyboard and mouse activity are handled by TVLINK.EXE interrupt</p>

² A processor is commonly considered a circuit element, and so considered by Perholtz (see col. 5, lines 42 - 43). Moreover, Perholtz processing can be distributed between software and discrete circuitry in accordance with, e.g., performance criteria (see, e.g., col. 22, line 24+).

the first signal conditioning circuit also including
an on-screen programming circuit that produces overlaid video signals on the video monitor of the workstation,

means for detecting keyboard and cursor control device signals entered in response to the overlaid video signals, and means for transmitting the keyboard and cursor control signal entered in response to the overlaid video signals to the central switch in order to control the operation of the central switch; and

processes. The TVLINK.EXE process combines and transmits this data to the host unit (col. 33, line 24+). Remote Data Circuitry 103 allows Host Unit access to occur (see, e.g., col. 20, line 32+). The PC's keyboard signals are routed to the keyboard circuit 101 of the Host unit, particularly via elements 123, 124, and 125 shown in Fig. 4B (see, e.g., col. 19, lines 42+). The PC's mouse signals are applied to mouse circuitry 117 of the Host unit (see, e.g., col. 19, line 63+; col. 14, lines 5 - 15).

The first conditioning circuit (e.g., remote PC processor 2) generates overlaid video signals on video monitor 3 of Remote Site 1. In this regard, when the user presses the left shift key three times within two seconds, the user at Remote Site 1 is returned to a System Main Menu [see, e.g., symbol 741 in Fig. 7E connecting to symbol AC] which (like other menus) pop-ups (i.e., overlays) over a portion of the Host PC's screen (see, e.g., col. 48, line 47+). Any host information displayed continues to be updated and visible behind the pop-up menu on the Remote PC's screen (see, e.g., col. 48, line 51+).

In response to the overlaid menus, the user by keyboard and mouse input can, e.g., reach a screen to select another host connected to the daisy chain switch and control the switch to connect the user to the selected another host. In this regard, symbol AC (following symbol 741 in Fig. 7E) connects to symbol AC in Fig. 7C to reach Connection Options Main Menu, one option of which (see connector symbol AD

	<p>connecting Fig. 7C and 7D) is Switch To New Unit screen 731 (see Fig. 7D). The Switch To New Unit 731 connection menu option is selected to switch from one Host Unit on a daisy chain to another Host Unit on the same daisy chain (see, e.g., col. 49, line 59+). When the Switch To New Unit 731 option is selected, a call list containing all Host Units is displayed 732 [see Fig. 7D]. The UP or Down arrow keys can be used to scroll through the list of Host Units, and once the desired Host Unit has been highlighted, the Enter key can be pressed to switch to the new Host Unit (see, e.g., col. 50, lines 3 - 13). The TVLINK.EXE program accesses a given Host Unit by sending a four byte packet. The Host Unit on the chain with a matching identification number will respond by unchaining and directly connecting to the data line (see, e.g., col. 53, line 1+). Thus, keyboard and mouse signals thus entered in response to the overlaid video signals allow a Remote PC to control the daisy chain switch and to switch between, and remotely control, multiple Host PCs (see, e.g., col. 7, line 44+).</p>
<p>a second signal conditioning circuit coupled to the remotely located computers for receiving the keyboard and cursor control device signals from an output of the central switch and for supplying the keyboard and cursor control signals to the remote computer.</p>	<p>The second signal conditioning circuit comprises Host Data Circuitry 116 (see Fig. 4A), which includes the Host Unit's data serial port and which passes both keyboard and mouse signals routed through the Host Unit to the Host PC Processor (see, e.g., col. 19, line 63+; col. 32, line 29).</p>
CLAIM 24	Reissue Application Disclosure
24. The system of claim 23,	The second signal conditioning circuit

<p>wherein the second signal conditioning circuit receives video signals produced by the remote computer system and</p>	<p>further comprises the video circuitry of Fig. 4A [e.g., blocks 110 - 113 and 115 controlled by video CPU 114] (see, e.g., col. 18, line 46+). Video signals incoming from Host PC VDAC are processed by Video Signal Input Circuitry 110 and the Video CPU 111. The resulting video is written to Video Output Buffer 115 (see, e.g., col. 22, line 56+ and Fig. 4A).</p>
<p>transmits the video signals to the central switch which routes the video signals to the first signal conditioning unit,</p>	<p>Once in Video Output Buffer 115, the video can be transferred through the Control CPU 106 (which comprises the central switch) and out the Remote Data Circuit 103 (which comprises the first signal conditioning circuit)</p>
<p>wherein the first signal conditioning unit receives the video signals from the central switch and applies the video signals to the video monitor of the workstation.</p>	<p>to a Remote PC 2, which can then be displayed in graphics mode (see, e.g., Fig. 1 and col. 26, line 15+)</p>

B2. SECOND ALTERNATE APPLICATION OF REISSUE CLAIMS

CLAIM 22	Reissue Application Disclosure
<p>22. A system for connecting a workstation of the type that includes</p> <p>a keyboard, a cursor control device, and a video monitor</p> <p>to one or more remotely located computers, comprising:</p>	<p>The workstation comprises the PC located at remote site 1, which is equipped with keyboard 4, mouse 4A, monitor 3 (see, e.g., Fig. 1 and col. 11, lines 25 - 33).</p> <p>The remotely located computers comprise PCs 10, 16, 20 (see, e.g., Fig. 1). The</p>

	system for connecting includes remote PC processor 2, modems or direct lines, and the host systems 6, 12, and 17 (see, e.g., Fig. 1).
a programmable switch for routing workstation input signals produced by at least one of the keyboard and cursor control device of the workstation to a remotely located computer;	<p>The programmable switch comprises one or more telephone switches through which Remote Site 1 is connected via phone line to <u>differing</u> Host Sites. By selecting differing dialing strings at Remote Site 1, Remote Site 1 is connected to differing Host Sites (see, e.g., col. 6, line 30 - 34; col. 44, lines 16 - 30; col. 46, lines 7 - 10; col. 49, line 62 - col. 50, line 2).</p> <p>The switch is programmable in that differing dialing strings are used to connect Remote Site 1 to differing Host Sites.</p>
<p>a first signal conditioner for receiving the workstation input signals and for transmitting the workstation input signals to an input of the switch,</p> <p>the first signal conditioner also including an on-screen programming processor that produces overlaid video signals on the video monitor of the workstation,</p>	<p>The first signal conditioner comprises remote PC processor 2³ which receives signals produced by keyboard 4 and mouse 4A. A TVLINK.EXE program executes at Remote PC Processor 2 (col. 32, line 61+). The remote keyboard and mouse activity are handled by TVLINK.EXE interrupt processes. The TVLINK.EXE process combines and transmits this data to over the phone line to an input of the telephone switch (see, e.g., col. 33, line 24+).</p> <p>The first signal conditioner (e.g., remote PC processor 2) generates overlaid video signals on video monitor 3 of Remote Site 1. In this regard, when the user presses the</p>

³ A processor is commonly considered a circuit element, and so considered by Perholtz (see col. 5, lines 42 - 43). Moreover, Perholtz processing can be distributed between software and discrete circuitry in accordance with, e.g., performance criteria (see, e.g., col. 22, line 24+).

means for detecting workstation input signals entered in response to the overlaid video signals, and means for transmitting the workstation input signals entered in response to the overlaid video signals to the switch in order to control the operation of the switch; and

left shift key three times within two seconds, the user at Remote Site 1 is returned to a System Main Menu [see, e.g., symbol 741 in Fig. 7E connecting to symbol AC] which (like other menus) pop-ups (i.e., overlays) over a portion of the Host PC's screen (see, e.g., col. 48, line 47+). Any host information displayed continues to be updated and visible behind the pop-up menu on the Remote PC's screen (see, e.g., col. 48, line 51+).

In response to the overlaid menus, the user by keyboard and mouse input can, e.g., reach a screen to select another Host Site and control the telephone switch to connect the user to a selected host at the another Host Site. In this regard, symbol AC (following symbol 741 in Fig. 7E) connects to symbol AC in Fig. 7C to reach Connection Options Main Menu, one option of which (see connector symbol AD connecting Fig. 7C and 7D) is to terminate the call to the current Host Site (see, e.g., symbol 737 in Fig. 7D leading via symbol AA to symbol 703 in Fig. 7A) so that a call can be made to a different Host Site (see, e.g., col. 49, line 62 - col. 50, line 2). When selected, the Call Host Site menu option 703 displays a call list 704 of Host Units that may be selected (see, e.g., col. 44, lines 16 - 30). The call list includes a dialing string needed to call the different Host Site (see, e.g., col. 46, lines 7 - 10). The UP or Down arrow keys can be used to scroll through the list of Host Units, and once the desired Host Unit has been highlighted, the Enter key can be pressed to switch to the new Host Unit (see, e.g., col.

	50, lines 10 - 13). A modem connection is then established through the telephone switch with the selected Host Site, then links to the requested Host Unit (see, e.g., col. 44, lines 27 - 29 and symbols 703 - 705 in Fig. 7A). Thus, keyboard and mouse signals thus entered in response to the overlaid video signals allow a Remote PC to control the telephone switch and to switch between, and remotely control, multiple Host PCs (see, e.g., col. 7, line 44+).
a second signal conditioner which receives the workstation input signals from an output of the switch and supplies the workstation input signals to the remotely located computer.	The second signal conditioner comprises Host Unit (e.g., 8, 13, or 18) (see, e.g., Fig. 1 and Fig. 4A) which passes both keyboard and mouse signals routed through the telephone switch to the Host PC Processor .
CLAIM 23	Reissue Application Disclosure
23. A system for connecting a workstation of the type that includes a keyboard, a cursor control device, and a video monitor to a number of remotely located computers, comprising:	The workstation comprises the PC located at remote site 1, which is equipped with keyboard 4, mouse 4A, monitor 3 (see, e.g., Fig. 1 and col. 11, lines 25 - 33). The remotely located computers comprise PCs 10, 16, 20 (see, e.g., Fig. 1). The system for connecting includes remote PC processor 2, modems or direct lines, and the host systems 6, 12, and 17 (see, e.g., Fig. 1).
a central programmable switch for connecting signals received on a number of inputs to a number of outputs;	The central programmable switch comprises one or more telephone switches through which Remote Site 1 is connected via phone line to <u>differing</u> Host Sites. By selecting differing dialing strings at Remote

	<p>Site 1, Remote Site 1 is connected to differing Host Sites (see, e.g., col. 6, line 30 - 34; col. 44, lines 16 - 30; col. 46, lines 7 - 10; col. 49, line 62 - col. 50, line 2).</p> <p>The switch is programmable in that differing dialing strings are used to connect Remote Site 1 to differing Host Sites.</p> <p>The switch is central in that it is located between Remote Site 1 and the Host Unit.</p>
<p>a first signal conditioning circuit for receiving signals produced by the keyboard and cursor control device of the workstation and for transmitting the keyboard and cursor control device signals to an input of the central switch,</p> <p>the first signal conditioning circuit also including an on-screen programming circuit that produces overlaid video signals on the video monitor of the workstation,</p>	<p>The first signal conditioning circuit comprises remote PC processor 2⁴ which receives signals produced by keyboard 4 and mouse 4A. A TVLILNK.EXE program executes at Remote PC Processor 2 (col. 32, line 61+). The remote keyboard and mouse activity are handled by TVLINK.EXE interrupt processes. The TVLINK.EXE process combines and transmits this data to over the phone line to an input of the telephone switch (see, e.g., col. 33, line 24+).</p> <p>The first signal conditioning circuit (e.g., remote PC processor 2) generates overlaid video signals on video monitor 3 of Remote Site 1. In this regard, when the user presses the left shift key three times within two seconds, the user at Remote Site 1 is returned to a System Main Menu [see, e.g., symbol 741 in Fig. 7E connecting to symbol AC] which (like other menus) pop-ups (i.e., overlays) over a portion of the</p>

⁴ A processor is commonly considered a circuit element, and so considered by Perholtz (see col. 5, lines 42 - 43). Moreover, Perholtz processing can be distributed between software and discrete circuitry in accordance with, e.g., performance criteria (see, e.g., col. 22, line 24+).

means for detecting keyboard and cursor control device signals entered in response to the overlaid video signals, and means for transmitting the keyboard and cursor control signal entered in response to the overlaid video signals to the central switch in order to control the operation of the central switch; and

Host PC's screen (see, e.g., col. 48, line 47+). Any host information displayed continues to be updated and visible behind the pop-up menu on the Remote PC's screen (see, e.g., col. 48, line 51+).

In response to the overlaid menus, the user by keyboard and mouse input can, e.g., reach a screen to select another Host Site and control the telephone switch to connect the user to a selected host at the another Host Site. In this regard, symbol AC (following symbol 741 in Fig. 7E) connects to symbol AC in Fig. 7C to reach Connection Options Main Menu, one option of which (see connector symbol AD connecting Fig. 7C and 7D) is to terminate the call to the current Host Site (see, e.g., symbol 737 in Fig. 7D leading via symbol AA to symbol 703 in Fig. 7A) so that a call can be made to a different Host Site (see, e.g., col. 49, line 62 - col. 50, line 2). When selected, the Call Host Site menu option 703 displays a call list 704 of Host Units that may be selected (see, e.g., col. 44, lines 16 - 30). The call list includes a dialing string needed to call the different Host Site (see, e.g., col. 46, lines 7 - 10). The UP or Down arrow keys can be used to scroll through the list of Host Units, and once the desired Host Unit has been highlighted, the Enter key can be pressed to switch to the new Host Unit (see, e.g., col. 50, lines 10 - 13). A modem connection is then established through the telephone switch with the selected Host Site, then links to the requested Host Unit (see, e.g., col. 44, lines 27 - 29 and symbols 703 - 705 in Fig. 7A). Thus, keyboard and mouse

	signals thus entered in response to the overlaid video signals allow a Remote PC to control the telephone switch and to switch between, and remotely control, multiple Host PCs (see, e.g., col. 7, line 44+).
a second signal conditioning circuit coupled to the remotely located computers for receiving the keyboard and cursor control device signals from an output of the central switch and for supplying the keyboard and cursor control signals to the remote computer.	The second signal conditioning circuit comprises Host Unit (e.g., 8, 13, or 18) (see, e.g., Fig.1 and Fig. 4A) which passes both keyboard and mouse signals routed through the telephone switch to the Host PC Processor .
CLAIM 24	Reissue Application Disclosure
24. The system of claim 23, wherein the second signal conditioning circuit receives video signals produced by the remote computer system and	<p>The second signal conditioning circuit (e.g., Host Unit 8) is shown in Fig. 1 as receiving video signals from Host PC Processor 10. Host Unit 8 includes the video circuitry of Fig. 4A [e.g., blocks 110 - 113 and 115 controlled by video CPU 114] (see, e.g., col. 18, line 46+). Video signals incoming from Host PC VDAC are processed by Video Signal Input Circuitry 110 and the Video CPU 111. The resulting video is written to Video Output Buffer 115 (see, e.g., col. 22, line 56+ and Fig. 4A).</p> <p>Once in Video Output Buffer 115, the video can be transferred through the Control CPU 106 (which comprises the central switch) and out the Remote Data Circuit 103 (which comprises the first signal conditioning circuit)</p> <p>The video signals are routed from Host Unit 8 over the phone line and through the</p>
transmits the video signals to the central	

<p>switch which routes the video signals to the first signal conditioning unit,</p>	<p>telephone switch to Remote Site 1.</p>
<p>wherein the first signal conditioning unit receives the video signals from the central switch and applies the video signals to the video monitor of the workstation.</p>	<p>The video signals are received at Remote PC 2 of Remote Site 1, where the videos signals are displayed in graphics mode (see, e.g., Fig. 1 and col. 26, line 15+)</p>

C. CORRESPONDENCE OF REISSUE CLAIMS TO PROPOSED COUNT 1

The correspondence of each of reissue claims 23 - 24 to Proposed Count 1 is now explained:

Reissue claim 23 (independent) differs from Proposed Count 1 in the following three aspects (none of these distinctions providing patentable distinction between Proposed Count 1 and claim 22):

- Unlike Proposed Count 1, the switch of claim 23 is a “central” switch (as in Beasley claim 8).
- The preamble claim 23 refers to “a number of remotely located computers”, whereas the preamble of Proposed Count 1 refers to “one or more remotely located computers” (similar to Beasley claim 8).
- The first paragraph limitation of claim 23 describes the switch as functioning to “connect signals received on a number of inputs to a number of outputs”, whereas Proposed Count 1 refers to employment of the programmable switch “for routing signals produced by the keyboard and cursor control device of the workstation to a remotely located computer” (in similar manner to Beasley claim 8).
- Claim 23 uses the terminology “first and second conditioning circuit” while Proposed Count 1 refers to a first and second “conditioner”.
- Claim 23 refers to an on-screen “programming circuit” while Proposed Count 1 refers to a on-screen programming “processor”.
- Claim 23, unlike Proposed Count 1, explicitly states in its last paragraph that the second signal conditioner is coupled to the remotely located computers.

- Claim 23 requires involvement of both both) of keyboard and cursor device signals. Proposed Count 1, on the other hand, defines the term "workstation input signals" to refer to at least one of the keyboard and cursor device signals produced at the workstation, and thus requires involvement of either one (but not necessarily both) of keyboard and cursor device signals.
- Reissue claim 24 (dependent), like Beasley claim 2, merely indicates that the switch also routes video signals in a second direction, e.g., from the remote computer system back to the first signal conditioning circuit, which applies the video signals to the video monitor of the workstation.

D. NOTICE OF LITIGATION

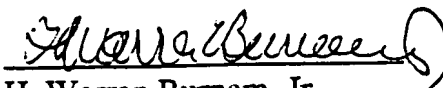
United States Patent 5,721,842 to Beasley et al., from which claims have therein been copied to provoke an interference, is involved in the following litigation: Civil Action C98-246Z, Apex PC Solutions, Inc. v. Cybex Computer Products Corporation, US District Court, Western District of Washington. The patent upon which the captioned reissue application is based is not involved in litigation.

E. MISCELLANEOUS

The Commissioner is authorized to charge the undersigned's deposit account no. 14-1140 in whatever amount is necessary for entry of this Request and the continued pendency of the captioned reissue application and the Interference requested therewith, including but not limited to any necessary additional claims fees and extension of time fees.

Reissue of US Patent 5,732,212
Attorney Dkt: 2540-6
Perholtz et al.

Respectfully submitted,
NIXON & VANDERHYE, P.C.



H. Warren Burnam, Jr.

Reg. No. 29,366

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November 25, 1998

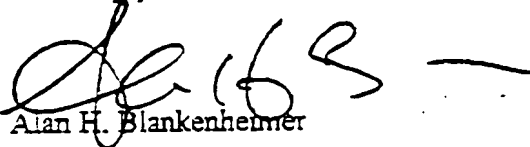
Apex PC Solutions, Inc. v. Cybex Computer Products and Rose Electronics

Dear Counsel:

I enclose the Notice of Allowance Apex has received on Application No. 08/869,723, a continuation of the '842 patent, entitled Interconnection System for Viewing and Controlling Remotely Connected Computers With On-Screen Video Overlay for Controlling of the Interconnection Switch.

We previously have produced to each of you the application and amendment specifying the claims that have now been allowed. Given that you are scheduled to depose two of the inventors beginning on December 9, to prevent duplication of such depositions or inefficient use of the inventors' time, we invite you to examine the inventors as may be appropriate concerning these allowed continuation claims.

Sincerely yours,


Alan H. Blankenheimer

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Enclosure

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Robert J. McAnghan, Jr.

-2-

November 25, 1998

Copy to:

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& General Counsel
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Woodinville, Washington 98072

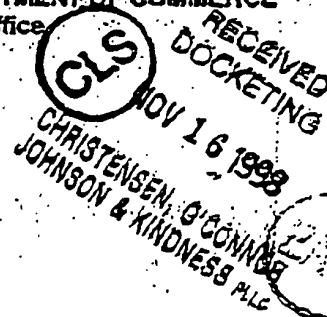
Stuart R. Dunwoody
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Seattle, Washington 98101-1688

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12523_1



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office



NOTICE OF ALLOWANCE AND ISSUE FEE DUE

CHRISTENSEN O'CONNOR JOHNSON
& KINDNESS
1420 FIFTH AVENUE
SUITE 2300
SEATTLE WA 98101

APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED		
08/969,000	11/10/87	032	DAWNE - B -	11/12/98		
First Named Applicant	SEASLEY,	35 USC 154(d) term ext.	0 DAYS			
TITLE OF INVENTION	INTERCONNECTION SYSTEM FOR VIEWER FOR CONTROLLING REMOTELY CONNECTED COMPUTERS WITH ON-SCREEN VIDEO EVENT FOR CONTROLLING OF THE INTERCONNECTION SYSTEM (AS APPLICABLE)					
ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPL. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
9	08/969,000	032	UTILITY	YES	\$600.00	11/12/98

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT.
PROSECUTION ON THE MERITS IS CLOSED.

THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.

HOW TO RESPOND TO THIS NOTICE:

Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- If the status is changed, pay twice the amount of the FEE DUE shown above and notify the Patent and Trademark Office of the change in status, or
- If the status is the same, pay the FEE DUE shown above.

If the SMALL ENTITY is shown as NO:

- Pay FEE DUE shown above, or
- File verified statement of Small Entity Status before, or with, payment of 1/2 the FEE DUE shown above.

Part B-Issue Fee Transmittal should be completed and returned to the Patent and Trademark Office (PTO) with your ISSUE FEE. Even if the ISSUE FEE has already been paid by charge to deposit account, Part B Issue Fee Transmittal should be completed and returned. If you are charging the ISSUE FEE to your deposit account, section "4b" of Part B-Issue Fee Transmittal should be completed and an extra copy of the form should be submitted.

I. All communications regarding this application must give application number and batch number.

Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

YOUR COPY

Complete and mail this form, together with application fee, to:

Box ISSUE FEE
Assistant Commissioner for Patents
Washington, D.C. 20231

MAILING INSTRUCTIONS: This form should be used for transmitting the **ISSUE FEE**. Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Issue Fee, along with the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) indicating a new correspondence address; and/or (b) indicating a separate **FEE ADDRESS** for maintenance fee notifications.

WENT CORRESPONDENCE ADDRESS (Note: Lightly mark-up with any corrections or use 3 lines :)

L. 121/1:12

CHRISTENSEN O'CONNOR JOHNSON
2 KINDNESS
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101

Note: The certificate of mailing below can only be used for domestic mailings of the Issue Fee Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing.

Certificate of Mailing

I hereby certify that this Issue Fee Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above on the date indicated below.

(Depositor's name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
08/969,723	11/12/97	032	DINH, D	2757 11/12/98

Item Named
applicant BEASLEY, 35 USC 154(b) term ext. = 0 Days.

INTERCONNECTION SYSTEM FOR VIEWING AND CONTROLLING REMOTELY CONNECTED
COMPUTERS WITH ON-SCREEN VIDEO OVERLAY FOR CONTROLLING OF THE
INTERCONNECTION SWITCH (AS AMENDED)

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPL. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
0 AFXP111461	995-958.000	L33	UTILITY	YES	\$660.00	02/12/99

Change of correspondence address or indication of "Free Address" (37 CFR 1.363).
Use of PTO form(s) and Customer Number are recommended, but not required.

☐ Change of correspondence address (or Change of Correspondence Address form PTD/SB/122) assigned.

☒ "Fee Address" Indication (or "Fee Address" Indication form #T2/58/47) attached.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents, if no name is listed, no name will be printed.

1 _____

2 _____

3 _____

ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the salary. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the PTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE (CITY & STATE OR COUNTRY)

Please check the appropriate assignment category indicated below (will not be printed on the award)

☐ individual ☐ corporation or other private group entity ☐ government

42. The following fees are enclosed (make check payable to Commissioner of Patents and Trademarks):

☐ Issue Fee
☐ Advance Order - # of Copies _____

40. The following fees or deficiency in these fees should be charged to:

DEPOSIT ACCOUNT NUMBER _____
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☐ Advance Order - # of Copies _____

The COMMISSIONER OF PATENTS AND TRADEMARKS IS requested to apply the Issue Fee to the application identified above.

Authorized Signature)

(Page)

NOTE: The Issue Fee will not be assessed from anyone other than the applicant, a registered attorney or agent, or the assignee or other party in interest as shown by the records of the Patent and Trademark Office.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending on the needs of the individual case. Any comments on the amount of time required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, D.C. 20231. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND FEES AND THIS FORM TO:** Box Issue Fee, Assistant Commissioner for Patents, Washington D.C. 20231

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DETAILED ACTION

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the Issue Fee.

Pursuant to MPEP 606.01, the title has been changed to read:
--INTERCONNECTION SYSTEM FOR VIEWING AND CONTROLLING REMOTELY
CONNECTED COMPUTERS WITH ON-SCREEN VIDEO OVERLAY FOR CONTROLLING OF
THE INTERCONNECTION SWITCH--.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (703) 305-9655. The examiner can normally be reached on Monday-Thursday from 7:30 AM - 4:30 PM. The examiner can also be reached on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (703) 305-4792.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:
Commissioner of Patents and Trademarks
Washington, DC 20231

or faxed to:
(703) 308-9051, (for formal communications intended for entry)
(703) 308-5359 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II,
2121 Crystal Drive, Arlington, VA.. Sixth Floor (Receptionist).

Dung Dinh
Primary Examiner
November 6, 1998



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	CLASS	FIRST NAMED APPLICANT	D	ATTORNEY REQUEST NO.
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LM211112
CHRISTENSEN O'CONNOR JOHNSON
& KINDNESS
1420 FIFTH AVENUE
SUITE 2600
SEATTLE WA 98101

EXAMINER	
ART UNIT	PAPER NUMBER

11/12/98

DATE MAILED:

NOTICE OF ALLOWABILITY

PART I.

1. ☒ This communication is responsive to terminal disclaimer + amendment filed 10-6-98
2. ☒ All the claims being allowable. PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice Of Allowance And Issue Fee Due or other appropriate communication will be sent in due course.
3. ☒ The allowed claims are 11-35, 37-43
4. ☒ The drawings filed on 11-13-97 are acceptable.
5. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received. ☐ not been received. ☐ been filed in parent application Serial No. filed on
6. ☒ Note the attached Examiner's Amendment.
7. ☐ Note the attached Examiner Interview Summary Record, PTO-413.
8. ☐ Note the attached Examiner's Statement of Reasons for Allowance.
9. ☐ Note the attached NOTICE OF REFERENCES CITED, PTO-892.
10. ☒ Note the attached INFORMATION DISCLOSURE CITATION, PTO-1443.

PART II.

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE THREE MONTHS FROM THE "DATE MAILED" indicated on this form. Failure to timely comply will result in the ABANDONMENT of this application. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

1. ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
2. ☐ APPLICANT MUST MAKE THE DRAWING CHANGES INDICATED BELOW IN THE MANNER SET FORTH ON THE REVERSE SIDE OF THIS PAPER.
 3. ☐ Drawing informalities are indicated on the NOTICE RE PATENT DRAWINGS, PTO-848, attached hereto or to Paper No. . CORRECTION IS REQUIRED.
 4. ☐ The proposed drawing correction filed on has been approved by the examiner. CORRECTION IS REQUIRED.
 5. ☒ Approved drawing corrections are described by the examiner in the attached EXAMINER'S AMENDMENT. CORRECTION IS REQUIRED.
 6. ☐ Formal drawings are now REQUIRED.

Any response to this letter should include in the upper right hand corner, the following information from the NOTICE OF ALLOWANCE AND ISSUE FEE DUE: ISSUE BATCH NUMBER, DATE OF THE NOTICE OF ALLOWANCE, AND SERIAL NUMBER.

Attachments:

- ☒ Examiner's Amendment
- ☐ Examiner Interview Summary Record, PTO-413
- ☐ Reasons for Allowance

NOV 25 '98 17:07

- ☐ Notice of Informal Application, PTO-152
- ☐ Notice re Patent Drawings, PTO-848
- ☐ Listing of Bonded Draftsmen

PAGE 06

** TOTAL PAGE 08 **

Attachment 9



US005732212A

United States Patent [19]

Perholtz et al.

[11] Patent Number: 5,732,212

[45] Date of Patent: Mar. 24, 1998

[54] **SYSTEM AND METHOD FOR REMOTE MONITORING AND OPERATION OF PERSONAL COMPUTERS**[75] Inventors: Ronald J. Perholtz, Silver Spring, Md.;
Eric J. Elmquest, Arlington, Va.

[73] Assignee: Fox Network Systems, Inc., Rockville, Md.

[21] Appl. No.: 180,824

[22] Filed: Jan. 13, 1994

Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 966,081, Oct. 23, 1992, Pat. No. 5,566,339.

[51] Int. Cl.⁶ G06F 11/00[52] U.S. Cl. 395/200.11; 395/200.09;
395/838[58] Field of Search 395/200, 800,
395/500, 575, 700, 775, 725, 20.77, 200.11,
20, 72, 838, 200.09; 371/16-22[56] **References Cited****U.S. PATENT DOCUMENTS**

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"Navigating the Perils of Remote Control" by David Willis and Bruce Broadman, *Network Computing*, Oct. 1, 1993, pp. 44-62."Novell Unwraps Remote-Access Ware" by Michael Dorch, *Communications Week*, Sep. 13, 1993, p. 12."Remote Power On/Off", *Computer Discount Warehouse Catalog*, 1993, p. 26."Sentry Remote Power Manager", Ad in *Network Computing*, Sep., 1993, p. 204.

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"Keyplex" by Data Vision, Inc.

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"AT&T Video Phone" by AT&T.

(List continued on next page.)

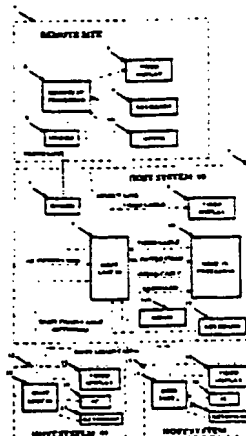
Primary Examiner—Mehmet B. Geckil

Attorney, Agent, or Firm—Sixbey, Friedman, Leedom & Ferguson, P.C.; Eric J. Robinson

[57] **ABSTRACT**

A system and method for accessing, controlling and monitoring a data processing device in which a video raster signal from the data processing device is analyzed to determine the information displayed on a video display monitor attached to the data processing device is used. The video raster signal is converted to a digital form and a cyclic redundancy check is performed on the digital data to determine the information contained in the video raster signal and to generate a compressed representation of that information. The information may then easily and quickly be transmitted to a remote location for analysis and review. Additionally, commands from the remote location can be transmitted to the system to control the data processing device.

21 Claims, 42 Drawing Sheets

Microfiche Appendix Included
(3 Microfiche, 255 Pages)

Attachment 10

BROWN & BAIN, P.A.
Attorneys at Law

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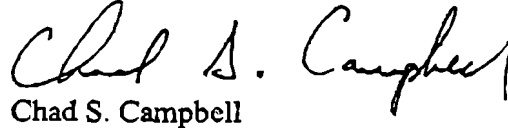
January 5, 1999

Apex PC Solutions, Inc. v. Cybex Computer Products and Rose Electronics

Gentlemen:

Enclosed is a proposed form of stipulation to effect a change in the current schedule of pretrial deadlines and the trial date for the Cybex and Rose cases. We look forward to your thoughts.

Very truly yours,



Chad S. Campbell

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FACSIMILE

CAM/jla

Enclosure

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James D. Berquist
Robert J. McCaughan, Jr.

-2-

January 5, 1999

Copy with enclosure to:

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Vice President of Business Development
& General Counsel
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Stuart R. Dunwoody
DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101-1688

FACSIMILE

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

APEX PC SOLUTIONS, INC., a Washington
corporation,

Plaintiff,

v.

CYBEX COMPUTER PRODUCTS
CORPORATION, an Alabama corporation,

Defendant.

No. C98-246Z and
C98-245Z

**STIPULATION TO ADJUST
CONSOLIDATED CASE SCHEDULE**

APEX PC SOLUTIONS, INC., a Washington
corporation,

Plaintiff,

v.

ROSE ELECTRONICS, a Texas general
partnership,

Defendant.

The parties to the above cases, which have been consolidated for purposes of discovery,
stipulate as follows:

1. Plaintiff Apex PC Solutions, Inc. ("Apex") is in the process of prosecuting an application

STIPULATION TO ADJUST CONSOLIDATED
CASE SCHEDULE - I

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1 with the United States Patent and Trademark Office ("PTO") for issuance of a continuation patent
2 in connection with the '842 patent, which is the subject of both actions captioned above.

3 2. On November 12, 1998, the PTO issued a Notice of Allowance for certain continuation
4 claims submitted by Apex.

5 3. The Notice of Allowance states that the continuation claims have been examined by the
6 PTO and approved for issuance as a patent and that the prosecution on the merits of the continuation
7 application is closed.

8 4. Apex has paid the issue fee due for the allowed continuation claims and anticipates that
9 the continuation patent will be published in ordinary course (probably within the next couple of
10 months) and issued by the PTO.

11 5. Apex believes and contends that the continuation claims allowed by the PTO will read on
12 the accused products manufactured by Defendant Cybex Computer Products Corp. ("Cybex") and
13 by Rose Electronics ("Rose"). Accordingly, Apex intends to seek injunctive and monetary relief
14 from both Defendants for infringement of the continuation claims after they have issued.

15 6. Apex, Cybex, and Rose each believe that it would be far less expensive for the parties
16 and more efficient for the Court to combine the anticipated litigation with respect to the
17 continuation claims with the pending litigation involving the '842 patent.

18 7. At present, the parties are engaged in deposition discovery and the preparation of expert
19 disclosures and reports. Under the current schedule, much of that discovery would need to be
20 repeated or supplemented to address the continuation claims once they are added to the pending
21 cases.

22 8. To permit the timely addition of the continuation claims to the pending cases and to
23 avoid the need for duplication or supplementation of ongoing discovery activities, the parties jointly
24 propose that the current pretrial deadlines and trial date for the pending cases be adjusted by 90
25 days, as follows:

26 STIPULATION TO ADJUST CONSOLIDATED
CASE SCHEDULE - 2

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1	Trial date	OCTOBER 6, 1999
2	Discovery to be completed by, and	July 7, 1999
3	all discovery motions to be noted	
	for consideration by	
4	Disclosure of expert witnesses	May 7, 1999
5	Disclosure of rebuttal expert witnesses	June 7, 1999
6	All motions to be filed by	July 7, 1999
7	(the only exceptions will be	
8	discovery motion, motions <u>in limine</u> ,	
9	and motions not reasonably foreseeable	
	at that time)	
10	Motions <u>in limine</u> to be filed by	September 7, 1999
11	Perpetuation depositions by	September 7, 1999
12	Pretrial order lodging date	September 17, 1999
13	Trial briefs, proposed voir dire	October 1, 1999
14	questions, and requested	
	jury instructions	
15	Proposed Findings of Fact and	October 1, 1999
16	Conclusions of Law (non-jury	
	cases only)	
17		
18	9. Finally, with or without the continuation claims, the parties do not believe that the	
19	discovery necessary for trial can be completed within the time allowed under the pending schedule.	
20	Accordingly, the parties request an adjustment to the schedule for that reason as well.	
21		
22		
23		
24		
25		
26		

STIPULATION TO ADJUST CONSOLIDATED
CASE SCHEDULE - 3

BROWN & BAIN, P.A.
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1 Dated: January 4, 1999

2
3 By _____

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26 STIPULATION TO ADJUST CONSOLIDATED
CASE SCHEDULE - 4

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1 Copy of the foregoing faxed and mailed
2 this _____ day of January, 1999, to:

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26 STIPULATION TO ADJUST CONSOLIDATED
CASE SCHEDULE - 5

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